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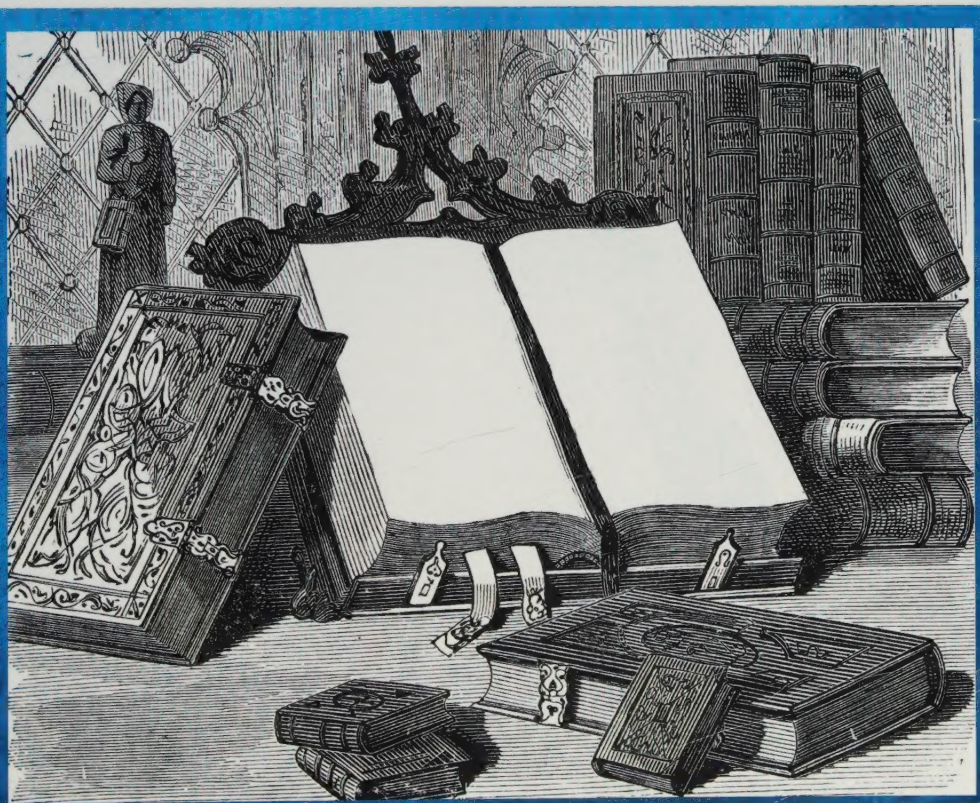
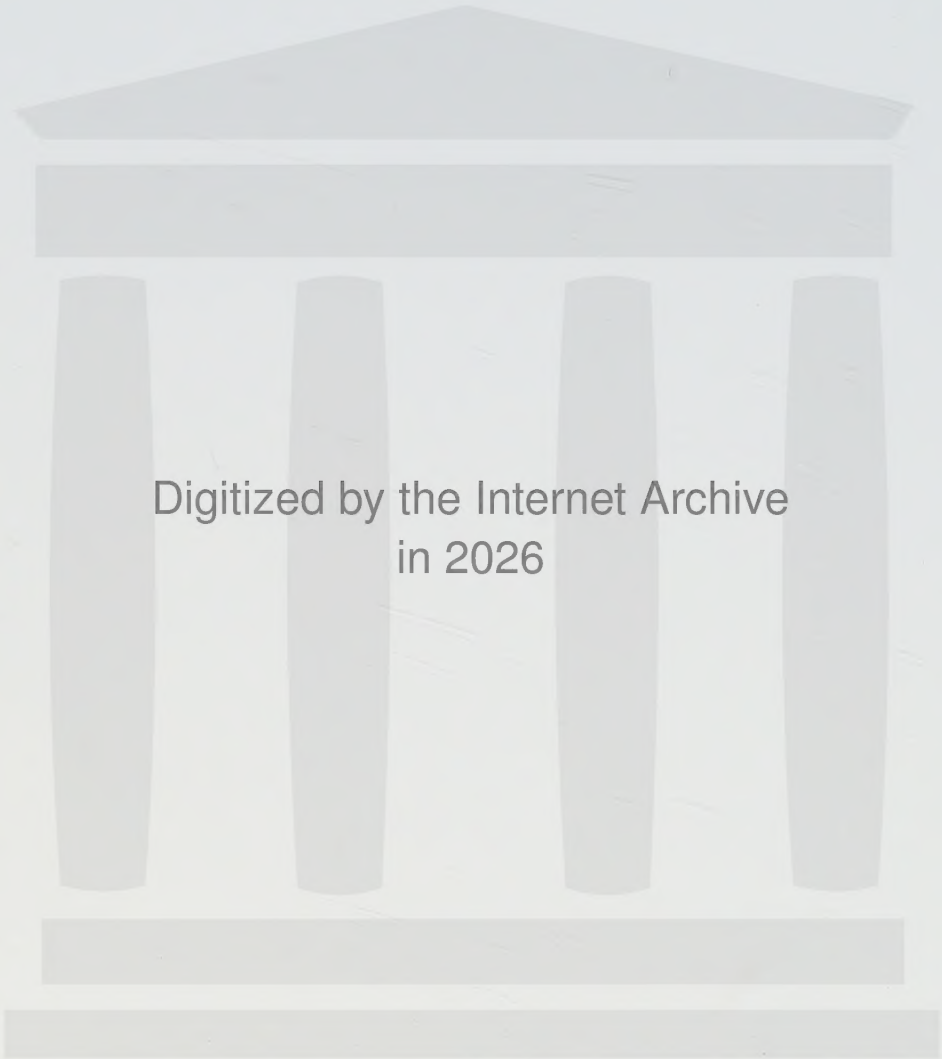
G. Manley Wetherfield

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A manual of bankruptcy, and imprisonment for debt : under the Bankruptcy and Debtors acts 1869 ...

G. Manley Wetherfield

A manual of bankruptcy, and imprisonment for debt : under the Bankruptcy and Debtors acts 1869 ...

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LONDON

LONGMANS, GREEN, READER, AND DYER.

A

Manual of Bankruptcy,

AND

IMPRISONMENT FOR DEBT

Under the Bankruptcy and Debtors Acts 1869

An Epitome of the Law under these Statutes.

WITH A COMPARATIVE TABLE SHOWING THE CHANGES MADE BY THE NEW ACT

BY

G. MANLEY WETHERFIELD,

SOLICITOR,

Author of "A Treatise on Composition Deeds," "The County Courts Acts, 1867-8-9," "County Court Reform," &c., &c.

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PREFACE.

THE Bankruptcy Act, 1869, which will come into operation with the New Year, is a very short, simple, and sweeping measure Repealing all former statutes, its perusal seems like beginning the study of Bankruptcy Law over again. Many of its provisions, though repeated from former Acts, come fresh at the present day, and altogether it is a great innovation upon what we have become accustomed to as the legal relations of debtor and creditor Under these circumstances, I have thought that a brief but clear description of the provisions contained in the new Acts, and of the alterations they effect in the old law, might be found useful to those two great classes for whom they cannot but have much interest—viz., the Legal Profession and the Mercantile Community

To the Legal Profession I offer this little work as an outline of what the new law will be in its operation. It contains all the sections of both Acts, which, with a view to its greater usefulness, are placed at the end of each chapter, and will thus be found very easy of reference. A comparative table, showing the changes made in the old law by the new Act is added A text-book cannot be written upon a new and an untried Act; neither can a complete work be put forward until the rules and orders are issued

But, meanwhile, a few hints and remarks may be collected together, and serve as some slight assistance in the future study of the new law It is in this way that I hope these pages will be found useful to the Profession.

To the Mercantile Community I offer this Manual as being a clear but untechnical account of the new Acts. Every legal phrase or doctrine has been carefully explained, and I believe that it contains nothing but what a man of ordinary intelligence can easily understand Now that the legal relations of debtor and creditor are daily growing in importance with the increase of trade, it is becoming more and more essential that all should try and give life and truth to that necessary fiction of government, that every man knows the laws of his country: and which of these laws is of greater moment to the majority than Bankruptcy, treating, as it does, of those losses and misfortunes in life from which none of us can claim complete immunity?

I therefore hope that this Manual will fulfil the promise of its title-page, and be found an epitome of the law under the Bankruptcy and Debtors Acts, 1869; and that as such it will prove useful to those readers for whom it is intended

G. M. W.

1, *Gresham Buildings, Guildhall.*
London, November, 1869

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COMPARATIVE TABLE,

SHOWING THE IMPORTANT ALTERATIONS IN THE LAW UNDER THE ACTS OF 1849 AND 1861, EFFECTED BY THE BANKRUPTCY ACT, 1869.

For those provisions which are entirely new readers must consult the different chapters of this work.

THE PETITION

The Old Law.	*The New Law.*
By s 89, Act 1861, a single petitioning creditor's debt must amount to 50*l.* if two 70*l.* together, if three or more, 100*l*	By s. 6, Act 1869, the debt of a single creditor or the aggregate of debts due to several creditors must not amount to less than 50*l.*
By s 97, Act 1861, for the purpose of a petition debts due to secured creditors shall be reckoned after deducting the value of such security	By s 6, the creditor may give up his security, or estimate it and petition for the balance, provided that the trustee may take it at such estimate.
The Acts of bankruptcy contained in ss. 70 to 73, Act 1861, and s 69, Act 1849 comprise all that are in the new Act, with the addition of lying in or escaping from, prison.	Sec 6 gives the usual Acts of bankruptcy for traders and non traders, with the exception of those relating to imprisonment. the declaration of insolvency is also retained
By s 88, Act, 1849, the Act of bankruptcy must have been committed within twelve months prior to the petition and by s 72, Act 1861, the declaration of insolvency must have been filed within two months.	By s. 6, the Act of bankruptcy upon which a petition is founded must have occurred within the preceding six months and no distinction is made at to the declaration filed by the debtor of his inability to pay

The old Law	*The new Law*
	his debts The petition must now be *served*
THE DEBTOR'S SUMMONS.	
Ss 76 to 83, Act 1861, give the proceedings under a judgment debtor summons and make non-payment an act of bankruptcy Ss 78 to 86, Act 1849, do the same for the trader debtor summons	Under the new Act both are abolished, but s. 7 gives a debtor's summons that is applicable to traders and non-traders, non-payment of which is also an act of bankruptcy It is much similar to the old trader debtor summons
RELATION BACK	
By s 117, Act 1161, the bankrupt's property vests in the creditors' assignee immediately upon and by virtue of his appointment, but the assignee's title began, by relation back, at the time the act of bankruptcy was committed, upon which the petition had been presented.	By s 11, Act 1869, this is the same, with the addition that if there be more than one act of bankruptcy, then the trustee's title will relate back to the first, if committed within twelve months prior to the adjudication, and if the bankrupt was at the time indebted to an unpaid creditor in a sum sufficient to support a petition
REPUTED OWNERSHIP	
By s 125, Act 1849, if any bankrupt at the time he becomes such, shall by the consent and permission of the true owner have in his possession order or disposition any goods or chattels whereof he is reputed owner, the Court may order the same to be sold for the benefit of his creditors It was held that the words "goods and chattels" were not confined to	In s 15, c 5, Act 1869, the same words are used, but they are confined to *traders*, and have a proviso that things in action, other than debts due to the bankrupt in the course of his trade shall not be deemed "goods and chattels," neither is an order of the Court made necessary, so that such property will vest in the trustee upon his appointment S 11, upon

The old Law.	*The new Law*
visible property, but included things in action.	relation back, should be read with this clause.
Discharge of Bankrupt.	
By s 159, Act 1861, the bankrupt may apply for his discharge and it is for the creditors to oppose him He is to be discharged, unless he has been guilty of a misdemeanour or has fraudulently contracted debts, or not kept proper books and accounts or because of his extravagance, &c in any of these cases the order may be refused or suspended in the Court's discretion By s 171, the bankrupt or any creditor may, within 30 days after such refusal or suspension, appeal to the Court of Chancery. The effect of the order of discharge was to release the bankrupt from all his debts that were provable, with the exception of Crown debts	By s 48, Act 1869, the bankrupt, before obtaining his discharge must prove to the Court either, that his estate has paid ten shillings in the pound or might have done so but for the fraud or negligence of the trustee or that the creditors have passed a resolution to the effect that his failure to pay such ten shillings, arose without his fault and that they wish him discharged And the Court may refuse or suspend the order, if it appears that the bankrupt has made default in giving up his property, or is being prosecuted under the Debtors Act, 1869 For the right of appeal, see s 71. S 49 gives the effect of an order of discharge similar to the old law, and makes it conclusive evidence
Avoidance of Voluntary Settlements.	
By s 126, Act 1849, where the bankrupt, being at the time insolvent, transferred any of his property to his children or any other person, not being for value or in consideration of marriage the Court had power to sell the same for the benefit of creditors This section was	By s 91, Act 1869, where such post nuptial settlements are made by the bankrupt within two years prior to his bankruptcy, they shall be absolutely void as against the trustee and if made within ten years they shall also be void, unless the parties claiming under them can prove

The old Law.	*The new Law.*
of little use as an opposing creditor had to prove the bankrupt's insolvency at the time of making such a settlement	that the settlor was at the time able to pay his debts without using the property so settled.
APPEALS.	
Under the Act of 1861, there was an appeal from the Commissioners' decisions to the Lords Justices and by s 66, a similar appeal was given from any county court acting in bankruptcy	By s 71, Act 1869, an appeal is given from local bankruptcy courts, i. e, the county courts, to the chief judge in London and from his decisions to the Lords Justices in Chancery
COMPOSITIONS AND LIQUIDATIONS.	
Under the Act of 1861, amended by the act of 1868, dissenting creditors were bound by the act of an assenting majority after registration of a valid deed with the chief registrar Ss 110 and 185 to 188, Act 1861, allowed creditors at the first or any other meeting to take a case out of bankruptcy by a resolution confirmed by the Court	By s 126, Act 1869, a preliminary meeting is made necessary, and a special resolution of the same statutable majority will bind the minority after registration . creditors below 10*l.* being reckoned in value By s 28, the trustee with the assent of the creditors by a special resolution may accept any terms of settlement, subject to the approval of the Court, when the bankruptcy will be annulled, (see also s. 125)
CONSTITUTION AND POWERS OF COURT	
By the Act of 1849, there were a London Court and seven country district courts, the former having a jurisdiction of about 100 miles from London, and the rest of England was divided among	By s 59, Act 1869, if the debtor resides or carries on business within the London bankruptcy district, defined by s 60, to include the City of London and the districts of the ten metropolitan

The old Law.	*The new Law.*
the country district courts. By the Act of 1861, the Insolvent Debtors court was abolished, and the bankruptcy laws for the first time applied to all debtors, and the London court was charged with all cases occuring within 20 miles, where the debts amounted to less than 300*l*, those previously disposed of by the Insolvent court, while beyond 20 miles all such cases went to their respective county courts.	county courts mentioned in sch 2: he may be adjudged bankrupt by the London court. If not he must go to the county court of his district, subject to the provisions for removing proceedings By s 130, the country districts are abolished, and the county courts are to be called the local bankruptcy courts The limit as to the amount is done away with
Under the Acts of 1849 and 1861, the court consisted of commissioners both in London and the country districts, with Registrars, official assignees and messengers, and the county court Judges in other places, the registrars and high bailiffs of which acted as official assignee and messengers	By s 61, Act 1869, the London court shall consist of a Chief Judge and not more than four registrars, with other officers, in the discretion of the Chief Judge Official assignees are abolished
Under the Acts of 1849 and 1861, the Court dealt with the bankrupt's estate, but could not decide what should be so considered not being able to try questions of law or equity, except by consent	By s 72, Act 1869, the Court may try issues of law and fact to do complete justice between all parties, being subject to no other court, and having power to summon a jury

INTRODUCTION.

THE two subjects of this little work, Bankruptcy and Imprisonment for Debt, having been entirely created by statute, a brief sketch of their history will be found of service in considering the growth of the one, and in appreciating the abolition of the other.

By the old Common Law of England every man is bound to pay his debts. If he have not the money wherewith to do so, his creditors may obtain satisfaction by taking his goods. The first encroachment upon this idea was the introduction of imprisonment for debt in the 13th year of the reign of Edward I Now it cannot be too clearly remembered that in former times, and, as we shall see later on, to a certain extent at the present day, failure to pay one's debts was looked upon as a crime. This explains the introduction of imprisonment for debt, the reason given for which was that the close confinement would make a debtor pay his creditor the sooner, and teach him to be wary how he contracted debts without

having the means of payment. This false notion of the criminality of debt has been the cause of much misery and oppression, until at length the law which was made by statute nearly six hundred years ago has been by statute swept away.

The next great invasion of the Common Law was in the reign of Henry VIII., when the first Bankruptcy Act was passed: the preamble of which states, in effect, that it is framed to protect creditors against fraudulent debtors. This was the commencement of those Bankrupt laws about which it has been well said that everything in them was seizure, penalty, and coercion. An act of bankruptcy was a crime; a bankrupt a criminal. but, though all this is now altered, it is a fact that down to the reign of George IV. a bankrupt who did not surrender himself committed felony, for which the punishment was death This same principle held good, and everything was to the creditors' advantage until the beginning of the present century. Then a spirit of inquiry was shown by many celebrated lawyers, and the subject received much discussion Great dissatisfaction was felt at the state of Bankruptcy procedure, so full was it of abuses of every kind, the acts regulating it being scattered throughout the statute-book, and, to

use the words of a modern writer, forming the discordant produce of two centuries and a half. At length, in 1831, Lord Brougham got an Act passed which accomplished an entire revolution, and was the beginning of the present tendency of Bankruptcy legislation Instead of the seventy Commissioners who had formerly roved about the country carrying with them a disgraceful system and their own vices of corruption, a Court of Bankruptcy was established in London as it is found to this day

We must not forget, however, that the privilege of a discharge from all debts and liabilities had no reference to non-traders, it was strictly confined to traders; and the distinction is of great antiquity. The reasons for this, as stated in a recent work on Bankruptcy law, seem to have been that traders were justified, if not compelled, by the exigencies of their occupation, in giving and taking credit to a greater extent, and were exposed to greater risks from the acts of others or the changes by which the value of the commodities in which they dealt might be affected, than those whose means of living were derived from more certain sources. Thus the advantages of the Bankruptcy laws were strictly confined to traders, and until 1813, when the

Court for the relief of Insolvent Debtors was first established, non-traders had no way of getting released from prison or freeing themselves from their old debts. Though this distinction might once have been a sound and appropriate one, it was for a long time little better than an absurd anomaly. But during fifty years the two systems were kept up, separate courts and separate laws being provided for the relief of what was, after all, the same thing in each—indebtedness. Then in 1861 an act was passed abolishing so ridiculous a distinction, and it is to Lord Westbury's sound judgment that we owe the introduction of that clear and straightforward principle that treats all debtors on the same broad basis. The distinction is, as will presently be seen, still retained in some cases for the sake of convenience and propriety in procedure.

We would here refer to two definitions of the objects of Bankruptcy law, either of which will serve as a test to judge whether the present statute is likely to attain them, and in what degree of perfection. It has been said that Bankruptcy law should combine and regulate two great objects. 1st. The distribution of the effects of the debtor in the most expeditious, the most equal, and the most economical mode, 2nd

The liberation of his person from the demands of his creditors after he has made a full surrender of his property To which a caution should be added that his liberation is not effected in such a way as to encourage bankruptcy. Another way of putting much the same idea is to say that the law of Bankruptcy aims at two things—namely, justice to the creditor and kindness to the debtor.

The difficulty is to keep these two objects in due subordination to each other—to hold the scales evenly It will be found on reference to recent acts that they alternate between severity and kindness to the debtor The old idea of treating failure as a crime has at last quite gone, and in the Act of 1861 respect for the debtor's misfortunes was carried so far as to encourage him in every kind of fraud. The great question has always been how much power are the creditors to have over their debtor's estate. Is the assignee to be a trade or an official assignee, or are both to act jointly? All three ways have been tried, and each has in turn failed to give public satisfaction. Prior to 1832 trade assignees were in vogue, but when Lord Brougham introduced into his Act the reform of having an official assignee in every bankruptcy he was

universally applauded as having made a great improvement, for at that time it was customary for the creditors' assignee to keep the money of the estate in his own hands for an indefinite period, so that when the officials began their work vast outlying sums of money were recoverd and unexpected dividends declared. But before long creditors thought they had not sufficient power over estates, and after much discussion the Bankruptcy Consolidation Act of 1849 was passed. This gave the management of the estate to one who was chosen by the creditors themselves, although the official assignee continued to receive the produce. Under the Act of 1861, however, the official's power was reduced almost to a nullity, and by the new law trade assignees under the name of "trustees" are invested with full powers, and the officials, whose career began amid general satisfaction, are altogether abolished. So after much discussion and litigation we have, in this respect at least, returned to the law as it was before 1832, and it is earnestly to be hoped that we shall have none of the same evils repeated as those which disfigured the old state of things. Of the checks upon the trustee's authority we shall hereafter

speak, but it may be observed in passing that they do not appear very stringent.

Again, it is evidently essential that the debtor's estate should be collected and distributed as economically as possible, and that all the proceedings in bankruptcy should be very simple and the reverse of costly. Extravagance is one of the complaints made against the Act of 1861; but from what we can judge of the new law, without seeing the rules, &c., that have to be framed, we can hardly say that it is likely to be much more economical than its predecessor.

There was another Act passed about the same time as the two statutes forming the subject of this work. It repeals all the old law of Bankruptcy, and contains besides some provisions affecting the Insolvent Court, which was abolished in 1861. Section 15 of this Act (32 and 33 Vict., c. 83) provides that every insolvency shall, at the expiration of twelve months from the commencement of the Act, or at the expiration of twenty years from the date of the filing the petition (whichever last happens) be closed But this closing may be postponed in the discretion of the Court upon the application of any assignee, creditor, or other person interested, and when the insolvency is closed the

insolvent, or if he be dead, his personal representatives, shall be in the same position as if an order of discharge had been granted him under the Bankruptcy Act, 1869. These provisions will prove of importance in some cases by putting an end to the many vexed questions as to after-acquired property that might otherwise have had to be decided.

Of the various changes effected by this last statute in Bankruptcy legislation we shall speak in their order as hereafter arranged; but it may be observed that it is very difficult to say what will be the effect of a law of which the new Act is but an outline, so much remaining to be filled in by the Rules and Orders.

It has not been thought necessary to refer particularly to the authorities consulted in compiling this manual The accuracy of every statement here made can be amply proved; but the author wishes to acknowledge at the commencement how much valuable assistance he has received from the works of Lord HENLEY, DORIA, and MACRAE, and in particular from that excellent text book on Bankruptcy law by Messrs. GRIFFITH and HOLMES.

CHAPTER I.

DEBTORS AND CREDITORS

Their Rights and Remedies under the new Bankruptcy Act.

1. A debtor wishing to be freed from his embarrassments can no longer petition the Bankruptcy Court himself. This power, which was fully granted under the Act of 1861, became necessary when the Insolvent Court was abolished, and imprisonment for debt continued. Now that both are swept away it is no longer needed, and so under the new Act a debtor can only be adjudicated bankrupt upon his creditor's petition That the statute of last session contemplates the probability of friendly petitions is evident from the fact that among the acts of bankruptcy which both traders and non-traders may commit we find the present declaration of insolvency under a slightly different name, so that upon the debtor filing in the Court a declaration admitting that he is unable to pay his debts, one or more creditors for a claim or joint claims amounting to no less than £50, may at once make him bankrupt.

The old method of arranging with creditors by a deed of composition, inspectorship, assignment, or otherwise, which has for so long a time disgraced our law, is by the new Act abolished. But in its place the last statute has substituted two ways by which the same result may be brought about. These are termed "Liquidation by Arrangement," and "Composition with Creditors," and will hereafter be fully explained. The latter is most analogous to the old system, and will probably be often used. Being short and simple, it is, as far as we can judge at present, likely to prove satisfactory.

2. Creditors will no longer have that absolute right of imprisoning their debtors upon a judgment over £20 which they have for so many years possessed, and in some cases abused. But it must not be forgotten that the present practice of county court committals is continued and extended to the superior courts. This has reference to all claims of debt; but when the amount is above £50 the creditor's best remedy against his debtor is to make him bankrupt. Should there have been any fraud on the debtor's part, he may, as will be seen, be punished criminally, and it is hoped that the ample powers now given in this direction will be used to good purpose.

Under the new Act creditors have much more authority over their debtors' estates than has been the case for some years past. The trustee to be chosen by creditors in bankruptcy, although not necessarily a creditor, is practically one of themselves, and seems to have nearly absolute power. Should a debtor wish to arrange his affairs by either of the two modes already mentioned, it is only with the consent of a large majority of his creditors, both in number and value, expressed at two distinct meetings, and contained in a resolution passed by them, that he can move a single step towards effecting his purpose. Altogether, the abolition of imprisonment for debt is, we think, fully counterbalanced for creditors by the extra powers they receive. But as their main remedy against a debtor in cases of claims above £50 is to make him a bankrupt, this power will doubtless be often used, and so the requisite procedure is worthy of our most careful attention.

3. First of all, who can be made a bankrupt? Every debtor, whether trader or non-trader, whose insolvency is shown by the commission of an act of bankruptcy, comes within the scope of the new Act; aliens and denizens, or foreigners, whether resident in England or not, are included.

A married woman trading on her own account, her husband exercising no control over, nor being liable for, her debts, may be made bankrupt. So if she be legally divorced, or be the wife of a convict sentenced to transportation, even though he remain in England A married woman trading in the city may also be made bankrupt by the custom of London. An infant cannot, in general, be brought within the Bankruptcy Act, because he is unable to contract a debt in trade. But if he has held himself out as *sui juris*, and traded as such, or has represented that he is of full age, either at the time of contracting the debt or on other important occasions, he may be made bankrupt. For, on account of the fraud, he would be liable in Equity and the Bankruptcy Laws are framed on equitable principles. A lunatic may become a bankrupt provided the act of bankruptcy is proved to have been committed in a lucid interval And if a person having privilege of Parliament commits an act of bankruptcy he may be dealt wi' as if he had no such privi-

. 120)

4 The Bankrupt laws only relate to insolvent debtors, leaving others to the ordinary modes of procedure, so that to give the Court of Bank-

ruptcy a jurisdiction it is needful that a debtor's inability to meet his engagements should be shown As it would be difficult for a creditor to do this by positive proof without any admission from the debtor; the legislature has defined certain acts by committing which he renders himself liable to Bankruptcy procedure. These are called "Acts of Bankruptcy," and of necessity they have in some form or another always existed. By the new statute they are very clearly and shortly set out, and will be found in Sec. 6, at the end of this chapter. They are in most respects the same as under the Act of 1861, with the important exception that all those relating to imprisonment for debt are, of course, abolished as being no longer applicable.

The first is that a debtor has assigned his property to a trustee for the benefit of his creditors generally. This was the same under the Act of 1861, only there arrangements by deed being allowed, this clause was necessarily protected by certain other enactments. All these are now abolished, and it is retained simply as an act of bankruptcy. The second is that the debtor has in England or elsewhere made a fraudulent conveyance, gift, delivery, or transfer of his property, or any part thereof. Here the

whole question turns upon the legal meaning of the word "fraudulent," and this is so wide a subject that it is impossible within the scope of our little work to do more than give a few hints that may prove useful in ordinary practice. By a statute passed in the 13th year of the reign of Elizabeth, about the same time as another affecting bankrupts, it was provided that all gifts and conveyances made to defeat creditors should be void. Since then the law upon this subject has been growing in extent and intricacy, but it may be briefly observed that any deed or agreement which a court of equity would declare fraudulent, or that, from the facts, the law would deem a fraud on third persons, although fair as between parties thereto, is an act of bankruptcy. And it would make no difference whether the instrument were stamped or not, neither need it have been used. But an actual *bonâ fide* sale of even all a debtor's property at its fair value is not an act of bankruptcy, for the creditors would get the advantage of the money paid him. But if sold at a grossly low estimate, or paid for by the remission of an old debt, it would be fraudulent. Neither would a *bonâ fide* mortgage for value come within the bankrupt laws, but it

should be on a new advance, any security for an old debt being held bad.

The third act of bankruptcy given by the new statute is, that a debtor has, *with intent to defeat or delay his creditors*, departed out of England, or remained abroad, or, being a trader, done certain other acts to which we shall presently refer. All this is as old as the statute of Elizabeth, and is the same as was contained in the provisions of the Act of 1861. Each of the acts of bankruptcy, in the third clause, consist of two parts—1st, the intent, to defeat or delay creditors; and 2nd, what is known as the overt act, that is, the doing something which shows the debtor's intention. Should the creditor be able to establish these two things, it is not necessary for him to show that he or any one else was defeated or delayed by the debtor's fault. But if he can do this, it will of course give him a stronger case, and shift the onus of proof on to the debtor by making him show that such was not his intention. The best thing the debtor can do, then, is to adduce evidence giving another sufficient reason for his committing the act; as for instance, of going abroad upon his ordinary business.

In general, the intent to defeat or delay credi-

tors is implied from and sufficiently proved by the act itself; but collateral circumstances may be brought forward in support of the case. The debtor's admission may also be used against him. It must, however, be remembered that acts done with intent to defeat or delay persons who are not creditors will not be sufficient, but for this purpose the holder of a bill of exchange or a promissory note, though not yet due, is considered a creditor.

The fourth clause provides that if the debtor has filed a declaration admitting his inability to pay his debts, he has committed an act of bankruptcy. This is precisely the same as the declaration of insolvency under the Act of 1861, and the decisions come to upon the construction of that statute will apply equally to the new law This declaration, then, is not an act of bankruptcy until it is *filed by the debtor*, and, although the filing may be done by anyone whom he makes his agent for the time, yet it must be with such debtor's full consent. Where a declaration had been made by a debtor, and given by him to be filed in a particular event, but there being some misunderstanding about the matter, it was held that the declaration having been filed against good faith, and without the debtor's consent, was

invalid and did not constitute an act of bankruptcy. The Court, having power to annul an adjudication on the ground of equitable invalidity, did so in this case, and would probably follow the precedent wherever, though the legal proceedings are correct, the strictest good faith has not been preserved. So that a declaration of his inability to pay his debts, obtained from a debtor by unfair means or filed without his consent, will not be a valid act of bankruptcy and may be set aside, even after adjudication, by the equitable power of the Court

5. *Traders and non-traders* are, as we have seen, still distinguished for the purpose of defining what shall be considered acts of bankruptcy. As the difference will probably be of importance in many cases, we will briefly explain what is a trading within the meaning of the Act. The last statute has a description of traders in Schedule 1, which is nearly the same as the list contained in the Act of 1849. It contains, however, the additions of sharebrokers, stockbrokers, and stockjobbers. But the most important words are those that describe generally as traders those who, whether as agents or for themselves, "seek their living by buying and selling or buying and letting for hire goods and commodities, or by the

workmanship or the conversion of goods or commodities"

"*Buying and selling*" has been construed to mean strictly both buying *and* selling, or at least the intention to sell, for the buying alone would not be sufficient. If a man sell the produce of his own land, that will not make him a trader. If one buy meat or fish to sell with the view of profit, he is a trader; but if he only sell meat that he has bred or fish that he has caught himself, he is not a trader. But manufacturing produce and selling the ready-made article would probably be considered a trading under the Act To constitute *a buying and letting for hire*, these two things must not only take place separately but be related to each other in one transaction. Thus, one who buys furniture, and then uses it to let furnished apartments, is not a trader, the relation not being sufficiently close; but a livery-stable keeper who buys horses and then lets them for hire is a trader within the meaning of the Act. Under the description "*by the workmanship or the conversion of goods or commodities*," many various callings are included. Thus, a sculptor is not a trader, but he may be adjudged bankrupt as a dealer in marble and a worker of goods and commodities. It should be remembered that there

must be a continued sale or workmanship, or a beginning coupled with an intention to continue. A single act of buying and selling would not be sufficient, and the sale of extra things as it were, which are not in one's line of life—for instance, the sale of books by a schoolmaster, is not a trading. But the trading need not continue up to the time of the bankruptcy.

All the acts of bankruptcy affecting non-traders are of equal application to traders, but they have besides certain provisions specially framed to meet the peculiarities of their position in the community. Thus we read (s. 6, c. 3) "or *being a trader*, departed from his dwelling-house or otherwise absented himself, or began to keep house, or suffered himself to be outlawed." All these acts must, of course, be committed with the intent to defeat or delay creditors which has been already commented upon.

This *departure* may be for ever so short a time, and although no creditor calls in his absence, and it is equally applicable if it be only from his place of business, he having a dwelling-house elsewhere. But it must be voluntary and not compulsory, and with the requisite fraudulent intention. *Or otherwise absent himself*, are very general words, and seem to include every pos-

sible case Even failure to keep an appointment with a creditor is sufficient, and the place is not material so that it be not at the creditor's house We see, then, that a trader absenting himself voluntarily from any place, and though not necessarily defeating or delaying his creditors, yet doing it with that intention, commits an act of bankruptcy By *beginning to keep house* is meant that the debtor does not go to his shop or counting-house as usual, or that he denies himself to a creditor whenever or wherever he may call upon him, or closes his door, or puts up his shutters; all of which, with others of a similar nature, are acts of bankruptcy, if done with a fraudulent intention. The last in the clause is that he has *suffered himself to be outlawed*. The outlawry must take place in England or Wales. It is nearly an obsolete and a very meaningless proceeding of our old law, and is hardly possible to form an act of bankruptcy by being done by a debtor to defeat or delay his creditors. The fifth clause is " that *execution* issued against the debtor on any legal process for the purpose of obtaining payment of *not less than fifty pounds* has, in the case of *a trader*, been levied by seizure and sale of his goods " This provision is far simpler than one to the same effect in the Act of 1861. (s. 73.)

It must be always borne in mind that these acts of bankruptcy will be of no avail unless they have been committed within *six months* prior to the presentation of the petition which they are brought forward to support. Under the former statute twelve months was the limit

Non-payment upon a debtor's summons is by the sixth clause made an act of bankruptcy; but before proceeding to comment upon this last portion of our subject, it will be more convenient to give a brief explanation of the summons itself.

6. Under the old law there were two forms of proceeding having much the same result, one called a Judgment Debtor Summons, the other a Trader Debtor Summons The former of these could be used in all cases where a judgment had been obtained by the creditor on a debt amounting to fifty pounds; the latter was, as the words import, confined to traders. Both these are abolished by the new Act, and instead of them we have a *Debtor's Summons*, applicable to traders and non-traders, and being, in fact, a simplified form of the second of those already mentioned. It is to be framed upon the model of the common writ, and may be issued and heard by the Bankruptcy or other Court of competent jurisdiction, and in some cases by a County court.

This summons will probably be found simple and expeditious in practice, and give creditors a ready mode of recovering their debts or putting debtors in the bankruptcy Court. It is clearly described in section 7, at the end of this chapter, and so needs no further comment. A debtor who neglects to pay, secure, or compound his creditor's debt, being a trader, within seven days, or not being a trader, within three weeks, commits an act of bankruptcy.

7. *The petitioning creditor's debt*, as provided by section 6, must amount to not less than fifty pounds. This is the same as under the Act of 1861, but by the new statute the above sum is sufficient even though it is comprised of several creditors' debts put together, they conjointly signing the petition By the old law the debts of two creditors must have amounted to seventy, and, if three, to one hundred pounds to enable them to obtain an adjudication.

In the concluding portion of the above section we read "the debt of the petitioning creditor must be a *liquidated sum due at law or in equity*." These words are both short and simple, but for that reason they will probably need to have their meaning more definitely settled by theconstruction of courts of law A few points, however, are

quite clear upon this subject. By "liquidated" is meant certain and ascertained, mere claims of any kind are not included, and indeed the word "debt" itself means a sum due. So that though a man might have a right of action to recover certain damages that would not make him a petitioning creditor as the amount would be unliquidated and to a certain degree imaginary. By the words "due at law or in equity," the act probably means recoverable by one or the other of these two forms of procedure. The theory of bankruptcy law is, that by adjudication the Court receives authority to work out the payment of those creditors who could by legal action or equitable suit have compelled payment. So that, for instance, any debt more than six years old, and barred by the Statute of Limitations, would not support a creditor's petition, as he could never have recovered it in law or in equity. There must then be a legal debt due to the creditor either in his own right or as the representative of another recognised by law. He may then be an executor or trustee, but those for whom he holds in trust should give their consent. But the debt need not be due in the sense of payable at the time, for the endorsee of a bill of exchange may petition against the acceptor, even

though the bill have some time to run. For it is a leading principle in the bankruptcy laws that when a man commits an act of bankruptcy all his liabilities, though payable in the future, become due at once The same rule would apply if the agreed period of credit had not expired; and it is evident that no other practice would be just or satisfactory; for bankruptcy is one of the remedies given by Mercantile law, and if debtors had to wait any time before they could exercise that remedy after its application had become evident, the jurisdiction of the Court would be useless. But the debt must have accrued prior to, and exist at the time of, the commission of the act of bankruptcy, and, if a trader, before he has ceased to trade.

It must not be a *secured debt* unless the petitioner is willing to give up his security for the benefit of creditors. This was the law under the Act of 1861, but the new statute goes on, in s. 6, to provide "or unless the petitioner is willing to give an estimate of the value of his security, in which latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated." Provided that the trustee may buy such security at its estimated price.

32 & 33 VICTORIA, Cap. 71.

An Act to Consolidate and Amend the Law of Bankruptcy.

[We propose to give all the important sections of this statute *verbatim*, and in doing so it is believed that the convenience of both legal and general readers will be best consulted, for, to the first, the words of the Act itself are most acceptable, and, to the second, they will be found more clear and easy of comprehension than any summary we might make. Unlike any other, the Bankruptcy Act, 1869, has in it no technical terms or confused sentences It is written throughout in the simplest and most lucid style of composition, and, considering the subject, is really light reading. For this reason we advise all to read the Act for themselves, and we have therefore refrained from imitating the example of some writers in echoing the words of a statute, but have given them, as far as possible, in their original form. The arrangement of the sections has also been followed as far as was compatible with the plan of this book; but it is

believed that the alterations here made upon the somewhat arbitrary divisions of the Act will be of utility for practical purposes. Those sections which are of minor importance have been condensed, but their meaning will be found sufficiently expressed for general use.]

Preliminary.

1. This Act may be cited as "The Bankruptcy Act, 1869."

2 This Act shall not, except in so far as is expressly provided, apply to Scotland or Ireland.

3. This Act shall not come into operation until the first day of January one thousand eight hundred and seventy, which date is hereinafter referred to as the commencement of this Act

4 In this Act, if not inconsistent with the context, the following terms have the meanings hereinafter respectively assigned to them, that is to say,

"The Court" shall mean the court having jurisdiction in bankruptcy as by this Act provided:

"The registrar" shall mean the registrar of "the Court" as above defined:

"Prescribed" shall mean prescribed by rules of Court to be made as in this Act provided:

"Property" shall mean and include money, goods, things in action, land, and every description of property, whether real or personal, also, obligations, easements, and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incident to property as above defined.

"Debt provable in bankruptcy" shall include any debt or liability by this Act made provable in bankruptcy

"Person" shall include a body corporate:

"Trader" shall, for the purposes of this Act, mean the several persons in that behalf mentioned in the first schedule to this Act annexed.

5. A partnership, association, or company corporate, or registered under "The Companies Act, 1862," shall not be adjudged bankrupt under this Act

Acts of Bankruptcy.

6 A single creditor or two or more creditors if the debt due to such single creditor, or the amount of debts due to such several creditors, from any debtor, amount to a sum of not less than fifty pounds, may present a petition to the Court, praying that the debtor be adjudged a bankrupt, and alleging as the ground for such adjudication any one or more of the following acts or defaults, herein-after deemed to be and included under the expression "acts of bankruptcy"

(1) That the debtor has, in England or elsewhere, made a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally

(2) That the debtor has, in England or elsewhere, made a fraudulent conveyance, gift, delivery or transfer of his property or of any part thereof:

(3) That the debtor has, with intent to defeat or delay his creditors, done any of the following things, namely, departed out of England, or being out England remained out of England, or being a trader departed from his dwellinghouse, or otherwise absented himself, or begun to keep house, or suffered himself to be outlawed.

(4.) That the debtor has filed in the prescribed manner in the Court a declaration admitting his inability to pay his debts.

(5.) That execution issued against the debtor on any legal process for the purpose of obtaining payment of not less than fifty pounds has in the case of a trader been levied by seizure and sale of his goods:

(6.) That the creditor presenting the petition has served in the prescribed manner on the debtor a debtor's summons requiring the debtor to pay a sum due, of an amount of not less than fifty pounds, and the debtor being a trader has for the space of seven days, or not being a trader has for the space of three weeks, succeeding the service of such summons, neglected to pay such sum, or to secure or compound for the same

But no person shall be adjudged a bankrupt on any of the above grounds unless the act of bankruptcy on which the adjudication is grounded has occurred within six months before the presentation of the petition for adjudication, moreover, the debt of the petitioning creditor must be a liquidated sum due at law or in equity, and must not be a secured debt, unless the petitioner state in his petition that he will be ready to give up such security for the benefit of the creditors in the event of the debtor being adjudicated a bankrupt, or unless the petitioner is willing to give an estimate of the value of his security, in which latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated, but he shall, on an application being made by the trustee within the prescribed time after the date of adjudication, give up his security to such trustee for the benefit of the creditors upon payment of such estimated value

The Debtor's Summons

7. A debtor's summons may be granted by the court on a creditor proving to its satisfaction that a debt sufficient to support a petition in bankruptcy is due to him from the person against whom the summons is sought, and that the creditor has failed to obtain payment of his debt, after using reasonable efforts to do so. The summons shall be in the prescribed form, resembling, as nearly as circumstances admit, a writ issued by one of Her Majesty's superior courts It shall state that in the event of the debtor failing to pay the sum specified in the summons, or to compound for the same to the satisfaction of the creditor, a petition may be presented against him, praying that he may be adjudged a bankrupt. The summons shall have an endorsement thereon to the like effect, or such other prescribed endorsement as may be best calculated to indicate to the debtor the nature of the document served upon him, and the consequences of inattention to the requisitions therein made

Any debtor served with a debtor's summons may apply to the Court, in the prescribed manner and within the prescribed time, to dismiss such summons, on the ground that he is not indebted to the creditor serving such summons, or that he is not indebted to such amount as will justify such creditor in presenting a bankruptcy petition against him; and the court may dismiss the summons, with or without costs, if satisfied with the allegations made by the debtor, or it may, upon such security (if any) being given as the court may require for payment to the creditor of the debt alleged by him to be due, and the costs of establishing such debt, stay all proceedings on the summons for such time as will be required for the trial of the question relating to such debt. Provided that when the summons shall have issued from the London Court of Bankruptcy, such

trial shall be had either before such court or before any other Court of competent jurisdiction, and when the summons shall have issued from a county court, before such court in all cases in which it has now jurisdiction, and in all other cases before some competent tribunal.

Schedule I.

Description of Traders

Alum makers, apothecaries, auctioners, bankers, bleachers, brokers, brickmakers, builders, calenderers; carpenters, carriers, cattle or sheep salesmen, coach proprietors, cowkeepers, dyers, fullers, keepers of inns, taverns, hotels, or coffee houses, lime burners, livery stable keepers, market gardeners, millers, packers, printers, *sharebrokers*, shipowners, shipwrights, *stockbrokers*, *stockjobbers*, victuallers, warehousemen, wharfingers, persons using the trade or profession of a scrivener, receiving other men's monies or estates into their trust or custody, persons insuring ships or their freight or other matters against perils of the sea, persons using the trade of merchandise by way of bargaining, exchange, bartering, commission, consignment, or otherwise, by gross or by retail, and persons who either for themselves or as agents or factors for others, seek their living by buying and selling or buying and letting for hire goods or commodities, or by the workmanship or the conversion of goods or commodities, but a farmer, grazier, common labourer, or workman for hire shall not, nor shall a member of any partnership, association, or company which cannot be adjudged bankrupt under this Act, be deemed as such a trader for the purposes of this Act

CHAPTER II.

THE PETITION AND ADJUDICATION.

The creditor having obtained reliable proof of an act of bankruptcy being committed, and able to bring forward sufficient evidence to support his own debt for the requisite amount, may present a petition accompanied by an affidavit as to the truth of the statements it contains. He must then proceed to prove his case in the same way as he would before any other legal tribunal. Regarding evidence to support the act of bankruptcy we have already spoken, but the Judge will also have to be satisfied about the petitioning creditor's debt. If he can show as a fact that the required sum was due to him from the debtor, he throws the onus upon the latter of proving, if he is able, that it has been paid. But the evidence of the debt must be as full and satisfactory as in a case where he was suing for its recovery. Thus, if the creditor be the endorsee of a bill of exchange, drawn or endorsed by the debtor, the Court will require proof not only of the bill and of its being overdue, but also that

default was made by the acceptor, and that due notice of dishonour has been given to the proper parties. If the creditor relies upon an act of bankruptcy committed by a trader it will be necessary for him to prove the trading. It may be observed that the debtor himself and any other persons may be summoned to the Court to prove the petitioning creditor's case. So far this is all old law, but it will be equally true under the new Act.

But among the usual proceedings necessary to the validity of a petition, and which will be found fully commented upon in Chap. VII, the last statute has introduced one of some importance. Section 8 enacts that the bankruptcy petition shall be *served* in the prescribed manner. This is an additional trouble and expense to the creditor, but looking at the extra facilities afforded him under the new Act it is necessary for the debtor's protection.

2. As will be seen by reference to Section 9, when the petitioning creditor's debt is disputed, provision is made for the question to be tried in the same way as under a debtor's summons. The Court may require security to be given for the payment of whatever debt may be in fact established, and of the costs of the

proceedings But the Court may, meanwhile, if it thinks fit because of the delay, adjudge the debtor a bankrupt upon the petition of some other creditor, and dismiss under such terms as it may think just, the petition proceedings stayed as provided. By Section 10 it is enacted that the adjudication shall be advertised, and there are other sections relating to the same matter; but as they contain nothing new, and speak for themselves, we need not here comment upon them.

3. *Section* 13 gives the Court of Bankruptcy absolute discretion either to stay proceedings or to allow them to be commenced or continued against the bankrupt at any time after the presentation of the petition. But the most important provision is that by which the Chief Judge will be enabled to appoint a receiver or manager of the property or business of the bankrupt, and direct him to take immediate possession. This is an extension of the equitable power of the Court which cannot fail to prove beneficial by being of advantage to debtors, besides bringing larger dividends to creditors.

The Petition

8 A petition praying that a debtor may be adjudged a bankrupt, in this Act referred to as a bankruptcy petition, shall be served in the prescribed manner. At the hearing the Court shall require proof of the debt of the petitioning creditor, and of the trading, if necessary, and of the act of bankruptcy, or if more than one act of bankruptcy is alleged in the petition, of some one of the alleged acts of bankruptcy, and, if satisfied with such proof, shall adjudge the debtor to be bankrupt The Court may adjourn the petition, either conditionally or unconditionally, for the procurement of further evidence, or for any other just cause, or may dismiss the petition, with or without costs, as the Court thinks just.

9. Where the debtor appears on the petition, and denies that he is indebted to the petitioner, or that he is indebted to such amount as would justify the petitioner in presenting a bankruptcy petition against him, the Court upon such security, (if any) being given as the Court may require, for payment to the petitioner of any debt which may be established against him in due course of law, and of the cost of establishing such debt, may stay all proceedings on the petition for such time as may be required for trial of the question relating to such debt, and such trial shall be had in manner hereinbefore provided with respect to disputed debts under debtors summonses

Where proceedings are stayed the Court may, if by reason of the delay caused by such stay of proceedings or for any other cause it thinks just, adjudge the debtor

a bankrupt on the petition of some other creditor, and shall thereupon dismiss, upon such terms as it thinks just, the petition proceedings in which have been stayed as aforesaid.

10 A copy of an order of the Court adjudging the debtor to be bankrupt shall be published in the London Gazette, and be advertised locally in such manner (if any) as may be prescribed, and the date of such order shall be the date of the adjudication for the purposes of this Act, and the production of a copy of the Gazette containing such order as aforesaid shall be conclusive evidence in all legal proceedings of the debtor having been duly adjudged a bankrupt, and of the date of the adjudication

11 Relates to the title of the trustee having relation back to the act of bankruptcy, and will be found in the chapter on "The Bankrupt's Property."

12. Provides that creditors shall have no other remedies for their debts provable under the bankruptcy beyond those given in the Act, but it does not prevent them from realising any securities they may hold.

13. Enables the Court to restrain all suits and proceedings against the bankrupt or not, as it may think fit, and gives full powers for the appointment of a receiver.

CHAPTER III

THE TRUSTEE—HIS POWERS AND DUTIES.

By the new Act both trade and official assignees are abolished, and in their stead we hav a trustee To him the management of the estate and its distribution among creditors is in fact confided, and the success of the new bankruptcy law will greatly depend upon the way in which trustees use their powers and perform their duties It is the principle of the last statute to let creditors manage their own affairs with as little interference as may be possible from the Court of Lankruptcy. As the Lord Chancellor said in his speech upon the second reading of the Bill, it is as though the Legislature told creditors to "take the whole thing into your own hands, we enable you to put in motion the machinery by which you may realise the assets for yourselves." But the Court having the duty to perform of seeing that justice is done to all, can in its discretion call a meeting of creditors, with the Registrar in the chair, to see what are their real wishes upon any subject

1 *The appointment of trustee* is fully described in *section* 14, the provisions of which are very simple and entirely new. The trustee is in many respects similar to the trade assignee under the Act of 1861; but while, as will presently be seen, he has greater power, the two important checks of a Committee of Inspection and Comptroller are provided to keep the balance even. He will also much resemble the official liquidator and receiver in Chancery. The appointment is to take place by resolution, which it appears from *section* 16 will be decided by "a majority in value of the creditors present personally or by proxy at the meeting, and voting on such resolution." Until a trustee is appointed the Registrar shall hold that office and apply to the Court for directions as to the administration of the estate. The bankrupt's property is to vest in him immediately upon adjudication, and until a trustee is appointed; he will thus act as an official assignee, and have all requisite powers, making, however, no charge to the suitors of the Court.

With regard to the construction of *section* 14 it will be seen that the creditors are to appoint "some fit person, whether creditor or not," to be trustee in the bankruptcy. These words are

very wide, and will probably include even one who may be interested in the bankrupt. Under the Act of 1861 the creditors' choice of an assignee had to be confirmed by the Court. But by section 18 of the new statute none of that discretion is left. The appointment of trustee is, indeed, to be reported to the Court, but it is enacted that the Court, upon being satisfied that the requisite security has been entered into by him, shall give a certificate declaring him to be trustee of the bankruptcy, which certificate is made conclusive evidence, both of the appointment and its date. In *section* 14 we find a great innovation on that doctrine of equity which does not allow one acting in a fiduciary capacity to receive any compensation for his services. It is here provided that the creditors may award to the trustee "such *remuneration* as they may from time to time determine." Another difference between the new trustee and the old trade assignee is that the former will have to give such *security* as the creditors decide and the Court accepts, before he enters on his office. *The Committee of Inspection* is to be appointed at the first meeting, and shall be composed of not more than five creditors, its power will be noticed as we proceed.

2. *The status of trustee* is somewhat complicated, but of great practical importance. As we have seen, he receives his appointment solely from the creditors, and his power also is entirely derived from them. In managing the estate he must have regard to any directions they may give, in short he is emphatically their trustee. He is to be under the supervision of the Committee of Inspection, which in its turn may be set right by a general meeting of creditors. He will have every facility for making the best of the estate, and seems likely to be left with much discretion as to its management. He may summon meetings of the creditors from time to time to consult their wishes, and he may also apply to the Court for directions on any particular matter. From his decision aggrieved parties can appeal to the Court, where the act complained of may be confirmed, reversed, or modified. These provisions are contained in *sections* 20 *and* 21, which are worthy of a careful reading.

3 With regard to his *dealings with the bankrupt's property* the trustee has certain special powers and facilities which will be found fully described in *sections* 22, 23, *and* 24. Shares or stock of any description shall be transferred and vested in the trustee to the same extent as in

the case of the bankrupt himself had he not come into Court. With respect to copyhold property certain necessary provisions are made. The rule of law is that things in action or debts are not assignable so as to give the assignee a right to recover them in his own name But by *section* 22 it is enacted that things in action shall for the purpose of a suit or other proceeding be deemed to be assignable at law, and to have been duly assigned to the trustee in his official capacity. He will thus bring actions in his official name, and as provided in *section* 83, will be described as "the trustee of the property of ——— a bankrupt," inserting his name. The trustee is to take possession of all the bankrupt's books and papers, and to keep books himself which are to be open for inspection by any creditor. *Sections* 23 *and* 24 relate to his power of disclaiming any property that may be unmarketable or onerous, and though similar in principle to the provisions affecting trade assignees in the Act of 1861, they are different in detail, while the extension to the case of shares is entirely new.

4. *The trustee's powers and duties* are all set out in *sections* 25 *to* 30; but while referring our readers to the carefully expressed words of the

Act itself, a few remarks may be offered as useful in following the effect of these provisions. We read first that the trustee is to "receive and decide upon proof of debts in the prescribed manner, and for such purpose to administer oaths." This appears to be a very simple and useful clause, but it may give rise to many difficulties. For supposing the trustee to be a trader, as will probably often happen, how is he, having little knowledge of the law, to decide upon what debts may be legally admitted? Points will arise, as they have arisen upon this subject which it will be impossible for him to settle. It is, therefore, probable that much confusion will come to pass, and that in many cases the trustee will have to apply to the Court for directions, or creditors will appeal to its authority if there is any dispute. We need hardly say this provision is entirely new, and while believing in the sound sense and practical working of the Act generally it is not easy to help doubting whether this arrangement will succeed in being satisfactory. The second clause gives the trustee power "to carry on the business of the bankrupt as far as may be necessary for the beneficial winding up of the estate" This also is new and speaks for itself, but the provision is worth

remembering, as it will doubtless prove of much practical utility in many cases of trade failure. The other clauses are similar to those in the Act of 1861; but though far simpler they call for no special comment. By *section* 26 the trustee may appoint the bankrupt to superintend his property or carry on his business instead of doing so himself.

The powers of which we have spoken may be exercised by the trustee of his own motion and at his discretion; but those given by *section* 27 can only be used with the sanction of the Committee of Inspection. The first is that he may mortgage any part of the bankrupt's property for the purpose of paying his debts. This, though not a new provision, gives the trustee the same facility for making the most of the estate under his charge as was possessed by the trade assignee. The other clauses give him ample and useful powers for making satisfactory arrangements with creditors or compromising their claims. The fifth is as important as it is new, and will probably be of extensive application. It gives to the trustee power "to divide in its existing form amongst the creditors, according to its estimated value any property which *from its peculiar nature or other special*

circumstances cannot advantageously be realised by sale." The words here printed in italics are of much importance, and upon their construction will depend the question whether a creditor who has supplied stock to a bankrupt trader can be allowed to take it, or a portion of it back, as the dividend upon his debt. Such an arrangement as this would often be both convenient and economical to the estate, as the wholesale creditor could often afford to pay a higher price, the invoice price for instance, for his own stock back again, than could be obtained by a sale at auction.

Section 28 gives a plan of proceeding, the effect of which will be similar to that under the Act of 1861, when a bankruptcy is annulled and the estate taken out of Court. It provides that the trustee may, with the sanction of a special resolution of the creditors assembled at a meeting called for this purpose, and of which due notice has been given, accept a composition or assent to any general scheme for the arrangement of the bankrupt's affairs, with or without a condition that the order of adjudication is to be annulled: subject to the approval of the Court The section then goes on to make provision for the carrying out of such an arrangement.

Section 29 requires the trustee to have the consent of the Committee of Inspection before he employs a solicitor or other agent But it provides for cases that will probably be of frequent occurrence, by enacting that where the trustee is himself a solicitor he may contract to be paid a certain sum by way of percentage or otherwise as a remuneration both for his services as trustee and in his professional capacity. The Act, though carefully guarding against the illegallity of any such arrangement by providing that it shall be lawful. "notwithstanding any law to the contrary," does not say with whom the trustee is to contract; but it must be presumed to mean with the Committee of Inspection.

Section 30 aims at preventing the many abuses that were very wide-spread and frequent, prior 1832, when a system somewhat similar to the new one, but under a different name, was in practice It provides that the trustee shall pay all moneys in his hands into the bank, and makes him subject to certain heavy penalties if he retain any sum exceeding £50 for more than ten days The section is important, and will be found at the end of this chapter, but it may be observed in passing that the creditors must themselves put the law in motion for his punish-

ment. We should remark in concluding this portion of our subject that the trustee's power is divided into three parts 1. What he can do of his own motion and at his discretion. 2. What he can do with the sanction of the Committee of Inspection. 3. What he can do with the approval of a majority in number and value of the creditors present at a general meeting, or at the instance of a *special* resolution which must be decided by a majority in number *and three-fourths in value* of such creditors It is important to remember these three divisions and keep them distinct.

5. *The release of the trustee* is provided for by *sections* 51 *to* 53, which contain, though in a different form, much the same provisions as those of the Act of 1861 for granting the trade assignee a certificate. They speak for themselves, and need no comment; but if used in practice they will give the creditors still further power over their trustee, and help in making him do his duty well and honestly.

6 *Sections* 83 *and* 84 are comprised of *Regulations as to Trustees and Committees of Inspection* that need no explanation and call for little comment. Many of them are similar to those affecting trade assignees under the Act of 1861.

Clause 4 enables the Court to remove any trustee upon cause shown And following out the theory of the new law creditors have the same power, while over their exercise of it the Court has no discretionary jurisdiction. By *Clause* 11 the creditors may, by resolution, fix the quorum required to be present at a meeting of the Committee of Inspection. It will be remembered that this committee is not to exceed five, and may be less, so that there will not be much difficulty in fixing a quorum of such a small number.

By *section* 84 in case a trustee is not chosen at the first meeting or on any adjournment, the Court may either annul the adjudication or carry on the bankruptcy with the aid of the Registrar as trustee The same thing may be done in case of a vacancy in the office. This makes the likeness between the registrar and the official assignee already pointed out still more clear, and it must be remembered that when so acting the registrar is to have all the powers and duties of the trustee.

Appointment of Trustee.

14 When an order has been made adjudging a debtor bankrupt, herein referred to as an order of adjudication, the property of the bankrupt shall become divisible amongst his creditors in proportion to the debts proved by them in the bankruptcy; and for the purpose of effecting such division the Court shall, as soon as may be, summon a general meeting of his creditors, and the creditors assembled at such meeting shall and may do as follows:

1. They shall, by resolution, appoint some fit person, whether a creditor or not, to fill the office of trustee of the property of the bankrupt, at such remuneration as they may from time to time determine, if any, or they may resolve to leave his appointment to the committee of inspection hereinafter mentioned:

2. They shall, when they appoint a trustee, by resolution declare what security is to be given, and to whom, by the person so appointed, before he enters on the office of trustee:

3 They shall, by resolution, appoint some other fit persons, not exceeding five in number, and being creditors qualified to vote at such first meeting of creditors as in this Act mentioned, or authorised in the prescribed form by creditors so qualified to vote, to form a committee of inspection for the purpose of superintending the administration by the trustee of the bankrupt's property:

4. They may, by resolution, give directions as to the manner in which the property is to be administered by the trustee, and it shall be the duty of the trustee to conform to such directions, unless the Court for some just cause otherwise orders

15 Relates to the bankrupt's property that is divisible amongst his creditors, and will be found in Chap. IV.

16 The general meeting of the creditors to be summoned as aforesaid by the Court, and in this Act referred to as the first meeting of creditors, shall be held in the prescribed manner and subject to the prescribed regulations as to the quorum, adjournment of meeting, and all other matters relating to the conduct of the meeting or the proceedings thereat.

Provided that,—

1 The meeting shall be presided over by the registrar, or, in the event of his being unable to attend through illness or any unavoidable cause, by such chairman as the meeting may elect

2 A person shall not be entitled to vote as a creditor unless at or previously to the meeting he has in the prescribed manner proved a debt provable under the bankruptcy to be due to him:

3 A creditor shall not vote at the said meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained:

4 A secured creditor, shall for the purpose of voting, be deemed to be a creditor only in respect of the balance (if any) due to him after deducting the value of his security, and the amount of such balance shall, until the security be realised, be determined in the prescribed manner He may, however, at or previously to the meeting of creditors, give up the security to the trustee, and thereupon he shall rank as a creditor in respect of the whole sum due to him.

5 A "secured creditor" shall in this Act mean any creditor holding any mortgage, charge, or lien on the bankrupt's estate, or any part thereof, as security for a debt due to him

6 Votes may be given either personally or by proxy

7. An ordinary resolution shall be decided by a majority in value of the creditors present personally or by proxy at the meeting and voting on such resolution:

8. A special resolution shall be decided by a majority in number, and three fourths in value, and three fourths in value, of the creditors present personally or by proxy at the meeting and voting on such resolution.

17 Until a trustee is appointed the registrar shall be the trustee for the purposes of this Act, and immediately upon the order of adjudication being made the property of the bankrupt shall vest in the registrar On the appointment of a trustee the property shall forthwith pass to and vest in the trustee appointed.

The expression "trustee," when used in this Act, shall include the person for the time being filling the office of trustee, whether he be the registrar or not, but when the registrar holds the office of trustee he shall, unless the Court otherwise orders, in the administration of the property of the bankrupt, apply to the Court for directions as to the mode of administering such property, and shall not take possession thereof unless directed by the Court

18 The appointment of a trustee shall be reported to the Court, and the Court upon being satisfied that the requisite security has been entered into by him shall give a certificate declaring him to be trustee of the bankruptcy named in the certificate, and such certificate shall be conclusive evidence of the appointment of the trustee, and such appointment shall date from the date of the certificate. When the registrar holds the office of trustee, or when the trustee is changed, a like certificate of the Court may be made declaring the person therein named to be trustee, and such certificate shall be conclusive evidence of the person therein named being trustee

19 Refers to the conduct of the bankrupt, and will be found under that heading.

Status of Trustee

20 The trustee shall, in the administration of the property of the bankrupt and in the distribution thereof amongst his creditors, have regard to any directions that may be given by resolution of the creditors at any general meeting, or by the committee of inspection, and any directions so given by the creditors at any general meeting shall be deemed to override any directions given by the Committee of Inspection, the trustee shall call a meeting of the Committee of Inspection once at least every three months, when they shall audit his accounts, and determine whether any or what dividend is to be paid, he may also call special meetings of the said committee as he thinks necessary

Subject to the provisions of this Act, and to such directions as aforesaid, the trustee shall exercise his own discretion in the management of the estate, and its distribution amongst the creditors The trustee may from time to time summon general meetings of the creditors for the purpose of ascertaining their wishes; he may also apply to the Court, in manner prescribed, for directions in relation to any particular matter arising under the bankruptcy

The bankrupt, or any creditor, debtor, or other person aggrieved by any act of the trustee, may apply to the Court, and the Court may confirm, reverse, or modify the act complained of, and make such order in the premises as it thinks just The Court may from time to time, during the continuance of a bankruptcy, summon general meetings of the creditors for the purpose of ascertaining their wishes, and may, if the Court thinks fit, direct the registrar to preside at such meetings

The trustee shall, in relation to and for the purpose of acquiring or retaining possession of the property of the bankrupt, be in the same position in all respects as if he were a receiver of such property appointed by the Court of Chancery, and the Court may, on his application, enforce such acquisition or retention of property accordingly.

21. The provisions of this Act with respect to the first general meeting of creditors shall apply to any subsequent general meeting of creditors in a bankruptcy, with this exception, that subsequent meetings of creditors may be summoned by the trustee, or by a member of the Committee of Inspection, and that such meetings may, unless otherwise directed by the Court in the case of meetings summoned by the Court, be presided every by any person chosen by the creditors assembled at such meeting, and that any creditor whose debt has been proved, or the value of whose debt has been ascertained at or subsequently to such first meeting, shall be allowed to be present and to vote thereat.

Dealings with Bankrupt's Property.

22 Where any portion of the property of the bankrupt consists of stocks, shares in ships, shares, or any other property transferable in the books of any company, office, or person, the right to transfer such property shall be absolutely vested in the trustee to the same extent as the bankrupt might have exercised the same if he had not become bankrupt Where any portion of such estate consists of copyhold or customary property, or any like property passing by surrender and admittance or in any similar manner, the trustee shall not be compellable to be admitted to such property, but may deal with the same in the same manner as if such property had been capable of being and had been duly surrendered or otherwise conveyed to such uses as

the trustee may appoint; and any appointee of the trustee shall be admitted or otherwise invested with the property accordingly

Where any portion of the property of the bankrupt consists of things in action, any action, suit, or other proceeding for the recovery of such things instituted by the trustee shall be instituted in his official name, as in this Act provided, and such things shall, for the purpose of such action, suit, or other proceeding, be deemed to be assignable in law, and to have been duly assigned to the trustee in his official capacity.

The trustee shall, as soon as may be, take possession of the deeds, books, and documents of the bankrupt, and all other property capable of manual delivery The trustee shall keep, in such manner as rules of Court shall direct, proper books, in which he shall from time to time make or cause to be made entries or minutes of proceedings at meetings, and of such other matters as rules of Court shall direct, and any creditor of the bankrupt may, subject to the control of the Court, personally or by his agent inspect such books

23. When any property of the bankrupt acquired by the trustee under this Act consists of land of any tenure burdened with onerous covenants, of unmarketable shares in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the trustee, notwithstanding he has endeavoured to sell, or has taken possession of such property or exercised any act of ownership in relation thereto, may, by writing under his hand, disclaim such property, and upon the execution of such disclaimer the property disclaimed shall, if the same is a contract, be deemed to be determined from the date of the order of adjudication, and if the same is a lease be deemed to have been

surrendered on the same date, and if the same be shares in any company be deemed to be forfeited from that date, and if any other species of property it shall revert to the person entitled on the determination of the estate or interest of the bankrupt, but if there shall be no person in existence so entitled, then in no case shall any estate or interest therein remain in the bankrupt. Any person interested in any disclaimed property may apply to the Court, and the Court may, upon such application, order possession of the disclaimed property to be delivered up to him, or make such other order as to the possession thereof as may be just.

Any person injured by the operation of this section shall be deemed a creditor of the bankrupt to the extent of such injury, and may accordingly prove the same as a debt under the bankruptcy.

24. The trustee shall not be entitled to disclaim any property in pursuance of this Act in cases where an application in writing has been made to him by any person interested in such property, requiring such trustee to decide whether he will disclaim or not, and the trustee has for a period of not less than twenty-eight days after the receipt of such application or such further time as may be allowed by the Court declined or neglected to give notice whether he disclaims the same or not.

Powers and Duties of Trustee.

25. Subject to the provisions of this Act, the trustee shall have power to do the following things:

(1.). To receive and decide upon proof of debts in the prescribed manner, and for such purpose to administer oaths:

(2.) To carry on the business of the bankrupt so far as may be necessary for the beneficial winding up of the same

(3) To bring or defend any action, suit, or other legal proceeding relating to the property of the bankrupt:

(4) To deal with any property to which the bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt might have dealt with the same; and the sections fifty-six to seventy-three (both inclusive) of the Act of the session of the third and fourth years of the reign of William the Fourth (chapter seventy-four), "for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance," shall extend and apply to proceedings in bankruptcy under this Act as if those sections were here re-enacted and made applicable in terms to such proceedings:

(5) To exercise any powers the capacity to exercise which is vested in him under this Act, and to execute all powers of attorney, deeds, and other instruments expedient or necessary for the purpose of carrying into effect the provisions of this Act:

(6.) To sell all the property of the bankrupt (including the goodwill of the business, if any, and the book debts due or growing due to the bankrupt) by public auction or private contract, with power, if he thinks fit, to transfer the whole thereof to any person or company, or to sell the same in parcels.

(7) To give receipts for any money received by him, which receipt shall effectually discharge the person paying such monies from all responsibility in respect of the application thereof:

(8) To prove, rank, claim, and draw a dividend in the matter of the bankruptcy or sequestration of any debtor of the bankrupt.

26 The trustee may appoint the bankrupt himself

to superintend the management of the property or of any part thereof, or to carry on the trade of the bankrupt (if any) for the benefit of the creditors, and in any other respect to aid in administering the property in such manner and on such terms as the creditors direct.

27. The trustee may, with the sanction of the committee of inspection, do all or any of the following things

(1.) Mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his debts.

(2.) Refer any dispute to arbitration, compromise all debts, claims, and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the bankrupt and any debtor or person who may have incurred any liability to the bankrupt, upon the receipt of such sums, payable at such times, and generally upon such terms as may be agreed upon.

(3.) Make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors in respect of any debts provable under the bankruptcy:

(4.) Make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the property of the bankrupt, made or capable of being made on the trustee by any person or by the trustee of any person:

(5.) To divide in its existing form amongst the creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot advantageously be realised by sale.

The sanction given for the purposes of this section

may be a general permission to do all or any of the above-mentioned things, or a permission to do all or any of them in specified case or cases

28. The trustee may, with the sanction of a special resolution of the creditors assembled at any meeting of which notice has been given specifying the object of such meeting, accept any composition offered by the bankrupt, or assent to any general scheme of settlement of the affairs of the bankrupt upon such terms as may be thought expedient, and with or without a condition that the order of adjudication is to be annulled, subject nevertheless to the approval of the Court, to be testified by the judge of the Court signing the instrument containing the terms of such composition or scheme, or embodying such terms in an order of the Court

Where the annulling the order of adjucation is made a condition of any composition with the bankrupt or of any general scheme for the liquidation of his affairs, the Court, if it approves of such composition or general scheme, shall annul the adjudication on an application made by or on behalf of any person interested, and the adjudication shall be annulled from after the date of the order annulling the same.

The provisions of any composition or general scheme made in pursuance of this Act may be enforced by the Court on a motion made in a summary manner by any person interested, and any disobedience of the order of the Court made on such motion shall be deemed to be a contempt of Court. The approval of the Court shall be conclusive as to the validity of any such composition or scheme, and it shall be binding on all the creditors so far as it relates to any debts due to them and provable under the bankruptcy.

29 A trustee shall not, without the consent of the Committee of Inspection, employ a solicitor or

other agent, but where the trustee is himself a solicitor he may contract to be paid a certain sum by way of per-centage or otherwise as a remuneration for his services as trustee, including all professional services, and any such contract shall, notwithstanding any law to the contrary, be lawful.

30 The trustee shall pay all sums from time to time received by him into such bank as the majority of the creditors in number and value at any general meeting shall appoint, and failing such appointment into the Bank of England, and if he at any time keep in his hands any sum exceeding fifty pounds for more that ten days he shall be subject to the following liabilities, that is to say,

(1) He shall pay interest at the rate of twenty pounds per centum per annum on the excess of such sum above fifty pounds as he may retain in his hands:

(2) Unless he can prove to the satisfaction of the Court that his reason for retaining the money was sufficient, he shall, on the application of any creditor, be dismissed from his office by the Court, and shall have no claim for remuneration, and be liable to any expenses to which the creditors may be put by or in consequence of his dismissal

31 to 50 relate to proofs, dividends, and discharge, and will be found under these headings—

Release of Trustee.

51 When the bankruptcy is closed the trustee shall call a meeting of the creditors to consider an application to be made to the Court for his release. At the meeting the trustee shall lay before the assembled creditors an account showing the manner in which the bankruptcy has been conducted, with

a list of the unclaimed dividends, if any, and of the property, if any, outstanding, and shall inform the meeting that he proposes to apply to the Court for a release

The creditors assembled at the meeting may express their opinion as to the conduct of the trustee, and they, or any of them, may appear before the Court, and oppose the release of the trustee

The Court, after hearing what, if anything, can be urged against the release of the trustee, shall grant or withhold the release accordingly, and if it withhold the release shall make such order as it thinks just, charging the trustee with the consequences of any act or default he may have done or made contrary to his duty, and shall suspend his release until such charging order has been complied with, and the Court thinks just to grant the release of the trustee.

52. Unclaimed dividends, and any other monies arising from the property of the bankrupt remaining under the control of the trustee at the close of the bankruptcy of any bankrupt, or accruing thereafter, shall be accounted and paid over to such account as may be directed by the rules of Court to be made with the sanction of the Treasury, and any parties entitled thereto may claim the same in manner directed by such rules. The trustee shall also deliver a list of any outstanding property of the bankrupt to the prescribed persons, and the same shall, when practicable, be got in and applied for the benefit of the creditors in manner prescribed.

53. The order of the Court releasing the trustee of a bankruptcy shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the bankrupt, or otherwise in relation to his conduct as trustee of such bankrupt; but such order may be revoked by the Court on proof that it was obtained by fraud

Regulations as to Trustee and Committee of Inspection.

83. The following regulations shall be made with respect to the trustee and committee of inspection:

(1.) The creditors may, if they think fit, appoint more persons than one to the office of trustee, and where more than one are appointed they shall declare whether any act required or authorised to be done by the trustee is to be done by all or any one or more of such persons, but all such persons are in this Act included under the term "trustee," and shall be joint tenants of the property of the bankrupt. The creditors may also appoint persons to act as trustees in succession in the event of one or more of the persons first named declining to accept the office of trustee.

(2.) If any vacancy occur in the office of trustee by death, resignation, or otherwise, the creditors in general meeting shall fill up such vacancy, and a general meeting for the purpose of filling up such vacancy may be convened by the continuing trustee, if there be more than one, or by the registrar on the requisition of any creditor:

(3.) If through any cause whatever, there is no trustee acting during the continuance of a bankruptcy, the registrar of the Court for the time being having jurisdiction in the bankruptcy shall act as such trustee

(4.) The Court may, upon cause shown, remove any trustee. The creditors may, by special resolution at a meeting specially called for that purpose, of which seven days notice has been given, remove the trustee and appoint another person

to fill his office, and the Court shall give a certificate declaring him to be trustee

(5.) If a trustee be adjudged bankrupt, he shall cease to be trustee, and the registrar shall, if there be no other trustee, call a meeting of creditors for appointment of another trustee in his place.

(6) The property of the bankrupt shall pass from trustee to trustee, including under that term the registrar when he fills the office of trustee, and shall vest in the trustee for the time being during his continuance in office, without any conveyance, assignment, or transfer whatever.

(7) The trustee of a bankrupt may sue and be sued by the official name of "the trustee of the property of ——— a bankrupt," inserting the name of the bankrupt, and by that name may hold property of every description, make contracts, sue and be sued, enter into any engagements binding upon himself and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office.

(8) The certificate of appointment of a trustee shall, for all purposes of any law in force in any part of the British dominions requiring registration, enrolment, or recording of conveyances or assignments of property, be deemed to be a conveyance or assignment of property, and may be registered, enrolled, and recorded accordingly:

(9) All acts and things by this Act authorised or required to be done by or to the registrar may be done within the district of each Court having jurisdiction in bankruptcy by or to the registrar of that Court.

(10) Any member of the Committee of Inspection may resign his office by notice in writing signed by him, and delivered to the trustee:

(11) The creditors may by resolution fix the quorum required to be present at a meeting of the Committee of Inspection

(12) Any member of the Committee of Inspection may also be removed by a special resolution at any meeting of creditors of which the prescribed notice has been given, stating the object of the meeting.

(13) On any vacancy occurring in the office of a member of the Committee of Inspection by removal, death, resignation, or otherwise, the trustee shall convene a meeting of creditors for the purpose of filling up such vacancy:

(14) The continuing members of the Committee of Inspection may act, notwithstanding any vacancy in their body; and where the number of members of the Committee of Instruction is for the time being less than five the creditors may increase that number so that it do not exceed five:

(15) No defect or irregularity in the election of a trustee or of a member of the Committee of Inspection shall vitiate any act bonâ fide done by him, and no act or proceeding of the trustee or of the creditors shall be invalid by reason of any failure of the creditors to elect all or any members of the Committee of Inspection:

(16.) If a member of the Committee of Inspection become a bankrupt his office shall thereupon become vacant:

(17) Where there is no Committee of Inspection, any act or thing or any direction or consent by this Act authorised or required to be done or given by such committee may be done or given by the Court on the application of the trustee

81 The registrar may adjourn the first meeting of the creditors from time to time and from place to place, subject to the directions of the Court; but if, at such first meeting of creditors or at some adjournment thereof, no trustee is appointed by reason of the prescribed quorum not being present, or for any other reason whatever, the Court may annul the adjudication, unless it deems it expedient to carry on the bankruptcy with the aid of the registrar as trustee Moreover, if at any time during the bankruptcy no new trustee is appointed to fill a vacancy in that office, the Court may either carry on the bankruptcy with the aid of the registrar as trustee or annul the order of adjudication, as it thinks just.

CHAPTER IV.

THE BANKRUPT'S PROPERTY.

1. *The trustee's title* is simply by virtue of his appointment at the first meeting of creditors, and it would seem that the bankrupt's property will vest in him immediately after adjudication. The registrar is to act officially in that capacity until the creditors have chosen a trustee, and so the property first vests in him to be transferred as soon as the requisite appointment is made. This vesting will take place and move from one one to another without any conveyance, assignment, or transfer (section 83). But the trustee's title, although founded upon his appointment dates by relation back from the commencement of the bankruptcy. By *section* 11 it is provided that the completion of the act of bankruptcy upon which the order of adjudication was made shall be deemed to be the commencement of the bankruptcy. Now, such an act must, as already observed, have been committed within six months prior to the presentation of the petition, so that in general the trustee's title could not relate back to any date earlier than that period. But

in this section it is further provided that where the debtor is proved to have committed more acts of bankruptcy than one the bankruptcy shall be deemed to have commenced at the date on which the first of such acts was committed within *twelve months* next preceding the order of adjudication. But this will only be the case when at the time of committing such prior act of bankruptcy the debtor was indebted to a creditor or creditors in the sum of £50 or upwards, which still remains unpaid at the date of the adjudication, so that the trustee's title can never relate back for more than twelve months, and then only where it is proved that during the whole year the debtor was insolvent, or appeared such, and could have been made a bankrupt at any time. This latter portion of the section is new, but the former is similar to a provision in the act of 1861.

2 *The property divisible amongst creditors* is specified in *section* 15, which will be found at the end of this chapter. But the word "property" is defined by *section* 4 to include money, goods, and things in action, and every description of property, whether real or personal, obligations, easements, and every description of estate, interest, and profit, present or future, vested or contingent arising out of or incident to such pro-

perty. *Section* 15, above mentioned, provides that the property of the bankrupt shall not comprise two classes. 1. Property held by him in trust for any other person. This was the same under the Act of 1861, and the exception has been decided to include all property held by the bankrupt as agent or factor for another. If he have goods to sell on commission that is a trust; but if he sell them as his own or be considered reputed owner, they will become vested in the trustee under *clause* 5. Property placed in the bankrupt's hands for a specific purpose does not pass to his estate Neither would property obtained by fraud, nor property held by the bankrupt as trustee or executor The second exception comprises the tools (if any), of his trade, and the necessary wearing apparel and bedding of himself, his wife, and children to the inclusive value of not more than twenty pounds. This salutary provision for poor debtors was not in the Act of 1861, but it is a re-enactment of a section in an older statute The particulars that are to be comprised in the bankrupt's estate will be found in the concluding portion of *section* 15. They contain nothing new, with the exception of clause 5, where the old doctrine of reputed ownership is altered, and certainly improved

3. *Reputed ownership* is a theory and practice as old as the reign of James I, and had originally much show of justice. It arises where property is left in the possession, order, or disposition of a debtor with the consent and permission of the true owner. This debtor becoming bankrupt, such goods and chattels pass to the trustee. It has been said that in such cases the creditors get other people's property to which they have not just claim, and there is something in the objection. But the reason for the [illegible] that those who let debtors have their go[illegible] that they may by a show of property obtain credit, should take the consequence of their act, and that without such a provision more room would be given for the already common enough practice of swindling creditors. Under the new law reputed ownership will still continue, but two important amendments have been made in the practice as it formerly existed. It is to be confined to traders only, instead of including all debtors. This is a return to the doctrine as it was before bankruptcy was open to non-traders, and renders it far more equitable; for it is evident that traders are much more likely to obtain credit by the unfair means of showing other people's property as their own than those

who, having no business occupations, are less publicly before their creditors. The second amendment is that things in action other than debts due to the bankrupt in the course of his trade shall not be deemed within the clause under the old law, and upon the construction of the words "goods and chattels," it was held that all things in action, such as promissory notes, cheques, bills of exchange, bonds, &c., came within the doctrine of reputed ownership, and that, therefore, though not belonging to the bankrupt, they passed to his assignees. This was evidently a most unjust and improper extension of the original principle, for things in action are invisible property upon which the bankrupt could not have obtained credit. We have now noticed the two alterations; in other respects the doctrine remains the same as before the new Act, though some attempts were made in Parliament to abolish it altogether. It is of great importance, and worthy of a more lengthened consideration than can here be given, but a few hints may prove of service.

The words of the statute (s. 15, c. 5) are that the bankrupt's property divisible amongst his creditors shall comprise with other particulars "*all goods and chattels being at the commencement of*

the bankruptcy in the possession, order, or disposition of the bankrupt being a trader." This will include every variety of personal property, but has no relation whatever to land; it would also comprise things in action were they not afterwards specially excepted It would seem that such goods will, like all other property of the bankrupt, vest in the trustee upon his appointment, without any order of Court as was required by the Act of 1861. The *commencement of the bankruptcy* has been already explained, but care must be taken not to confuse this with the date of the adjudication itself. The words *possession, order,* or *disposition* explain themselves, and it has been held that the possession of the agent or servant is for this purpose the possession of the principal or master. *Being a trader* shows that the section has no application to non-traders, and in many cases, as, for instance, where loan offices lend money on bills of sale to both classes, the distinction will be important The clause then goes on "*by the consent and permission of the true owner of such goods and chattels the bankrupt is reputed owner, or of which he has taken upon himself the sale or disposition as owner, provided that things in action other than debts due to him in the course*

of his trade or business, shall not be deemed goods or chattels within the meaning of this clause, so that the mere possession by the bankrupt will not be sufficient, but it must also be with the *consent of the true owner.* The owner must, therefore, be able to give this consent, and the goods and chattels of an infant, a lunatic, or a married woman could not be brought within this clause, because they are legally unable to give such a permission. The consent will generally be inferred from the facts of each case, and become a matter of evidence. There has been much litigation upon this subject, but the words of the last statute are sufficiently like former provisions to make the decisions under the old law equally applicable to the new. With regard to the proviso as to things in action we have already spoken.

4. *Property devolving on Trustee —Section* 87 relates to executions against debtors on the eve of bankruptcy. It is in many respects similar to the provisions on the same subject in the Act of 1861, with two important alterations 1. The judgment is to be for *a sum* exceeding fifty pounds; this may be made up of debt and costs, while under the old law the debt alone must have amounted to £50. 2 The provisions

formerly confined to sheriffs are extended to high bailiffs or other officers of the County courts. Another alteration, or possibly omission, from the Act of 1861 is that the sale need not be by public auction, neither must it be advertised. It has always been found difficult, even with these safeguards, to prevent fraud: it will surely be more so without them. Moreover, the 74th section of the Act of 1861, under which this was done, applied to all cases of sale by execution, but this is now repealed. The purpose of section 87 is to provide that where notice has been given to the sheriff or high bailiff within fourteen days after a sale under an execution that a petition has been presented against the debtor, they shall hold the proceeds in trust to pay the same to the trustee if an adjudication follows upon that or any other petition. This is to be done after deducting expenses, and it will be an important question whether these words are meant to include the cost of action or only the sheriff's or bailiff's charges for levy and sale.

Sections 88 *and* 89 make similar provisions to those contained in the Act of 1861 with regard to the sequestration of benefices in cases where clergymen became bankrupt, and for putting by a portion of the salary or pension received by an

army or navy officer, or one in the Civil Service, &c., for the benefit of his creditors. *Section* 90 is new in so far as it extends the same provision to bankrupts of all classes, and gives the Court, upon the application of the trustee, discretionary power to set aside portions of their salaries or incomes. Under the old law this could only have been done by the Court with the bankrupt's consent, or in cases of proved misconduct.

5. *Voluntary settlements* are very clearly and shortly dealt with by *section* 91 of the new Act. Under the old law many fraudulent settlements were made by bankrupts, and it was always difficult to upset them on account of the difficulty of proving that the debtor was insolvent at the time he made such settlement. But by the last statute things are reversed, and the onus of proof is, in fact, thrown upon the debtor. A "settlement" is defined to mean "any conveyance or transfer of property," and it is enacted that any post-nuptial settlement made by a debtor of his property shall be *void* as against the trustee if he becomes a bankrupt within *two years* after its date. It shall also be void if his bankruptcy happen within *ten* years of such time unless the parties claiming under the settlement can prove that the settlor was

when he made it *able to pay all his debts without the aid of the property so settled*; so that in the first case such a settlement is absolutely void, in the second voidable, with the onus of proving its validity thrown upon those who claim under its provisions.

By *section* 92 any transfer of property or payment to one creditor with a view of giving such creditor a preference over the other creditors shall, if the debtor become bankrupt within *three months* after the date of such a transaction, be deemed fraudulent and void as against the trustee, but this is not to affect the rights of a purchaser or any other party in good faith, and for a valuable consideration This was much the same under the old law, and has given rise to a good deal of litigation; but the section of the last act, besides putting the matter in different words, fixes a limit of three months.

6 *Protected Transactions* —By *section* 94 any payment of money or delivery of goods made to or contract with the bankrupt in good faith and for valuable consideration before his adjudication, and without notice that he had committed an act of bankruptcy, is protected, and will be held valid

Section 95 provides that any conveyance of

his property made by the bankrupt or any attachment against his land, or execution against his goods in good faith and for valuable consideration, with or by any person not having at the time notice that he had committed an act of bankruptcy, shall be valid.

7. *The discovery of the bankrupt's property* is provided for in *sections* 96 *to* 99. These are similar to clauses that regulated the old law, and enable the Court to summon the bankrupt, his wife, or any person whatever known or suspected to have in his possession any of the bankrupt's estate, and to examine them concerning the bankrupt, his dealings, or property. A summons may also be issued against any person supposed to be indebted to bankrupt or capable of giving the Court any information about him or his business or estate. By *section* 98, if any person on examination admit that he is indebted to the bankrupt the Court may order him to pay to the trustee the amount admitted when and how it thinks expedient This provision is merely a shortened form of a clause to the same effect in the Act of 1849. Section 99 gives the Court power to issue a warrant to seize the bankrupt's property wherever it is concealed, and break open any room or building.

Relation of Trustee's Title

11 The bankruptcy of a debtor shall be deemed to have relation back to and to commence at the time of the act of bankruptcy being completed on which the order is made adjudging him to be bankrupt, or if the bankrupt is proved to have committed more acts of bankruptcy than one, to have relation back to and to commence at the time of the first of the acts of bankruptcy that may be proved to have been committed by the bankrupt within *twelve months* next preceding the order of adjudication; but the bankruptcy shall not relate to any prior act of bankruptcy, unless it be that at the time of committing such prior act the bankrupt was indebted to some creditor or creditors in a sum or sums sufficient to support a petition in bankruptcy, and unless such debt or debts are still remaining due at the time of the adjudication

Property divisible amongst Creditors

15 The property of the bankrupt divisible amongst his creditors, and in this Act referred to as the property of the bankrupt, shall not comprise the following particulars:

(1) Property held by the bankrupt on trust for any other person

(2) The tools (if any) of his trade, and the necessary wearing apparel and bedding of himself, his wife and children, to a value, inclusive of tools and apparel and bedding, not exceeding twenty pounds in the whole

But it shall comprise the following particulars

(3.) All such property as may belong to or be

vested in the bankrupt at the commencement of the bankruptcy, or may be acquired by or devolve on him during itscontinuance.

(4) The capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or during its continuance, except the right of nomination to a vacant ecclesiastical benefice.

(5) All goods and chattels being, at the commencement of the bankruptcy, in the possession, order, or disposition of the bankrupt, *being a trader*, by the consent and permission of the true owner, of which goods and chattels the bankrupt is reputed owner, or of which he has taken upon himself the sale or disposition as owner, provided that things in action, other than debts due to him in the course of his trade or business, shall not be deemed goods and chattels within the meaning of this clause

Property devolving on Trustee.

87 Where the goods of any trader have been taken in execution in respect of a judgment *for a sum exceeding fifty pounds* and sold, the sheriff, or in case of a sale under the direction of the County Court, the high bailiff or other officer of the County Court, shall retain the proceeds of such sale in his hands for a period of fourteen days, and upon notice being served on him within that period of a bankruptcy petition having been presented against such trader, shall hold the proceeds of such sale, *after deducting expenses*, on trust to pay the same to the trustee, but if no notice of such petition having been presented be served on him within such period of fourteen days,

or if, such notice having been served, the trader against whom the petition has been presented is not adjudged a bankrupt on such petition, or on any other petition of which the sheriff, high bailiff, or other officer has notice, he may deal with the proceeds of such sale in the same manner as he would have done had no notice of the presentation of a bankruptcy petition been served on him.

88 Enacts that where the bankrupt is a beneficed clergyman, a sequestration is to issue on the trustee's application, as of course, subject to the allowance of an annual stipend to the bankrupt for the performance of his usual duty, as the bishop may direct.

89 Provides that Army and Navy officers, clerks in the Civil Service, and Treasury accountants or pensioners, when bankrupt shall be liable, with the consent of their respective departments, to have a portion of their income, in the discretion of the Court, paid to the trustee for division amongst their creditors.

90 Where a bankrupt is in the receipt of a salary or income other than as aforesaid, the Court upon the application of the trustee shall from time to time make such order as it thinks just for the payment of such salary or income, or of any part thereof, to the trustee during the bankruptcy, and to the registrar if necessary after the close of the bankruptcy, to be applied by him in such manner as the Court may direct

Avoidance of Voluntary Settlements and Fraudulent Preferences

91 Any settlement of property made by a trader not being a settlement made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or

children of the settlor of property which has accrued to the settlor after marriage in right of his wife, shall, if the settlor becomes bankrupt within *two years* after the date of such settlement, be void as against the trustee of the bankrupt appointed under this Act, and shall, if the bankrupt becomes bankrupt at any subsequent time within *ten years* after the date of such settlement, unless the parties claiming under such settlement can prove that the settlor was at the time of making the settlement able to pay all his debts without the aid of the property comprised in such settlement, be void against such trustee Any covenant or contract made by a trader, in consideration of marriage, for the future settlement upon or for his wife or children of any money or property wherein he had not at the date of his marriage any estate or interest, whether vested or contingent in possession or remainder, and not being money or property of or in right of his wife, shall, upon his becoming bankrupt before such property or money has been actually transferred or paid pursuant to such contract or covenant, be void against his trustee appointed under this Act.

"Settlement" shall for the purposes of this section include any transfer of property

92 Every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own monies in favour of any creditor or any person in trust for any creditor, with a view of giving such creditor a preference over the other creditors shall, if the person making, taking, paying, or suffering the same become a bankrupt within three months after the date of making, taking, paying, or suffering the same, be deemed fraudulent and void as against the trustee of the bankrupt appointed under this Act, but this section shall not affect the rights of

a purchaser, payee, or incumbrancer in good faith and for valuable consideration.

93 Enacts that any treasurer, banker, attorney, or agent of the bankrupt, shall pay and deliver to the trustee all monies or securities in his possession as such officer or agent, unless he be entitled to retain them; and if he do not he shall be guilty of contempt of Court and may be punished accordingly.

Protected Transactions

94 Nothing in this Act contained shall render invalid,—

(1.) Any payment made in good faith and for value received to any bankrupt before the date of the order of adjudication by a person not having at the time of such payment notice of any act of bankruptcy committed by the bankrupt, and available against him for adjudication:

(2.) Any payment or delivery of money or goods belonging to a bankrupt, made to such bankrupt by a depositary of such money or goods before the date of the order of adjudication, who had not at the time of such payment or delivery notice of any act of bankruptcy committed by the bankrupt, and available against him for adjudication:

(3.) Any contract or dealing with any bankrupt, made in good faith and for valuable consideration, before the date of the order of adjudication, by a person not having, at the time of making such contract or dealing, notice of any act of bankruptcy committed by the bankrupt, and available against him for adjudication.

95 Subject and without prejudice to the provisions of this Act relating to the proceeds of the sale and

seizure of goods of a trader, and to the provisions of this Act avoiding certain settlements, and avoiding on the ground of their constituting fraudulent preferences, certain conveyances, charges, payments, and judicial proceedings, the following transactions by and in relation to the property of a bankrupt shall be valid, notwithstanding any prior act of bankruptcy,—

(1.) Any disposition or contract with respect to the disposition of property by conveyance, transfer, charge, delivery of goods, payment of money, or otherwise howsoever made by any bankrupt in good faith and for valuable consideration, before the date of the order of adjudication with any person not having at the time of the making of such disposition of property notice of any act of bankruptcy committed by the bankrupt, and available against him for adjudication :

(2.) Any execution or attachment against the land of the bankrupt, executed in good faith by seizure before the date of the order of adjudication, if the person on whose account such execution or attachment was issued had not at the time of the same being so executed by seizure notice of any act of bankruptcy committed by the bankrupt, and available against him for adjudication :

(3.) Any execution or attachment against the goods of any bankrupt, executed in good faith by seizure and sale before the date of the order of adjudication, if the person on whose account such execution or attachment was issued had not at the time of the same being executed by seizure and sale notice of any act of bankruptcy committed by the bankrupt and available against him for adjudication.

As to Discovery of Bankrupt's Property

96 The Court may, on the application of the trustee, at any time after an order of adjudication has been made against a bankrupt, summon before it the bankrupt or his wife, or any person whatever known or suspected to have in his possession any of the estate or effects belonging to the bankrupt, or *supposed to be indebted* to the bankrupt, or any person whom the Court may deem capable of giving information respecting the bankrupt, his trade dealings or property, and the Court may require any such person to produce any documents in his custody or power relating to the bankrupt, his dealings or property, and if any person so summoned, after having been tendered a reasonable sum, refuses to come before the Court at the time appointed, or refuses to produce such documents, having no lawful impediment made known to the Court at the time of its sitting and allowed by it, the Court may, by warrant addressed as aforesaid, cause such person to be brought up for examination

97. The Court may examine upon oath either by word of mouth or by written interrogatories, any person so brought before it in manner aforesaid concerning the bankrupt, his dealings or property.

98 If any person on examination before the Court admit he is indebted to the bankrupt, the Court may, on the application of the trustee, order him to pay to the trustee, at such time and in such manner as to the Court seems expedient, the amount admitted, or any part thereof, either in full discharge of the whole amount in question or not, as the Court thinks fit, with or without costs of the examination

99 Any person acting under warrant of the Court may seize any property of the bankrupt divisible amongst his creditors under this Act, and in the bank-

rupt's custody or possession, or in that of any other person, and with a view to such seizure may break open any house building, or room of the bankrupt where the bankrupt is supposed to be, or any building or receptacle of the bankrupt where his property is supposed to be, and where the Court is satisfied that there is reason to believe that property of the bankrupt is concealed in a house or place not belonging to him, the Court may, if it thinks fit, grant a search warrant to any constable or prescribed officer of the Court, who may execute the same according to the tenor thereof.

CHAPTER V.

PROOF OF DEBTS AND DIVIDENDS.

1 *What debts are provable* must be decided by reference to *section 31*, which is given verbatim in this chapter. It contains very general words that seem to include every possible claim, and is in many respects similar to the provisions of the old law. To put it briefly, which is as much as our space will permit, every debt and liability, the money value of which is capable of being estimated, is provable. The two exceptions to this general rule are—1. Unliquidated damages arising otherwise than by contract or promise 2. Debts of any kind contracted by bankrupt with creditors after notice of an act of bankruptcy upon which a petition could be founded.

2 *The mode of proof* will be still, as before, on the creditor's affidavit or declaration. After the trustee's appointment he can himself take such proofs, but as those of most importance, must, to give creditors power to vote, precede his election, they will have to be taken, as usual, before the Registrar of the Court or a com-

missioner for affidavits when sworn previously to the meeting. The useful provision in the Act of 1861, allowing the clerk or servant of a creditor to prove, when personally cognisant of the transaction, appears to be omitted from the last statute. The regulation of s. 80, c. 8 will facilitate the creditor's appointment of a representative, but as he must prove his debt before he can be recognised as a creditor, he will have to do this himself. For though the voting may be done by proxy the necessary affidavit of debt must be sworn by the creditor.

3 *Preferential debts*, or those that are to be paid in full before a dividend is declared, are provided for by *sections* 32 *to* 35. The provisions are in general similar to those of the old law, the difference being mainly in regard to procedure. Parochial or other rates, wages, and salaries still retain their priority of payment, but with the proviso of abating in equal proportions among themselves where the bankrupt's property is insufficient to pay all in full.

4. *Dividends* are to be declared by the trustee under the direction of the Committee of Inspection, with the obligation of explaining to a meeting of the creditors the reason of his not so declaring a dividend after the space of six months from the adjudication. See *sections* 41 *to* 46.

Proof of Debts

31 Demands in the nature of unliquidated damages arising otherwise than by reason of a contract or promise shall not be provable in bankruptcy, and no person having notice of any act of bankruptcy available for adjudication against the bankrupt shall prove for any debt or liability contracted by the bankrupt subsequently to the date of his so having notice.

Save as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the bankrupt is subject at the date of the order of adjudication, or to which he may become subject during the continuance of the bankruptcy by reason of any obligation incurred previously to the date of the order of adjudication, shall be deemed to be debts provable in bankruptcy, and may be proved in the prescribed manner before the trustee in the bankruptcy

An estimate shall be made according to the rules of the Court for the time being in force, so far as the same may be applicable, and where they are not applicable at the discretion of the trustee, of the value of any debt or liability provable as aforesaid, which by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value.

Any person aggrieved by any estimate made by the trustee as aforesaid may appeal to the Court, and the Court may, if it think the value of the debt or liability incapable of being fairly estimated, make an order to that effect, and upon such order being made such debt or liability shall, for the purpose of this Act, be deemed to be a debt not provable in bankruptcy, but if the Court think that the value of the debt or liability is capable of being fairly estimated it may direct such value to be assessed with the consent of all the parties interested before the Court itself without the interven-

tion of a jury, or if such parties do not consent by a jury, either before the Court itself or some other competent Court, and may give all necessary directions for such purpose, and the amount of such value when assessed shall be provable as a debt under the bankruptcy

"Liability" shall for the purposes of this Act include any compensation for work or labour done, any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement, or undertaking, whether such breach does or does not occur, or is or is not likely to occur or capable of occurring before the close of the bankruptcy, and generally it shall include any express or implied engagement, agreement, or undertaking, to pay, or capable of resulting in the payment of money or money's worth, whether such payment be as respects amount fixed or unliquidated; as respects time present or future, certain or dependent on any one contingency or on two or more contingencies; as to mode of valuation capable of being ascertained by fixed rules, or assessable only by a jury, or as matter of opinion.

32 The debts herein-after mentioned shall be paid in priority to all other debts. Between themselves such debts shall rank equally, and shall be paid in full, unless the property of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions between themselves, that is to say,

(1.) All parochial and other rates due from him at the date of the order of adjudication, and having become due and payable within twelve months next before such time, all assessed taxes, land tax, and property or income tax assessed on him up to the fifth day of April next before the date of the order of adjudication, and not exceeding in the whole one year's assessment,

(2) All wages or salary of any clerk or servant in the employment of the bankrupt at the date of the order of adjudication, not exceeding four month's wages or salary, and not exceeding fifty pounds; all wages of any labourer or workman in the employment of the bankrupt at the date of the order of adjudication, and not exceeding two months wages:

Save as aforesaid, all debts provable under the bankruptcy shall be paid pari passu

33 Provides that where persons are apprenticed or articled to the bankrupt, they or he may give notice to that effect to the trustee and the order of adjudication will then act as a discharge of the indentures. If any fee or premium has been paid to the bankrupt the trustee may return a proportionate sum to the clerk or apprentice out of the bankrupt's estate, taking into account the period of service Or the trustee may on being applied to transfer the articles or indentures to some other person.

34 The landlord or other person to whom any rent is due from the bankrupt may at any time, either before or after the commencement of the bankruptcy, distrain upon the goods or effects of the bankrupt for the rent due to him from the bankrupt, with this limitation, that if such distress for rent be levied after the bankruptcy it shall be available only for one year's rent accrued due prior to the date of the order of adjudication, but the landlord or other person to whom the rent may be due from the bankrupt may prove under the bankruptcy for the overplus due for which the distress may not have been available.

35 When any rent or other payment falls due at stated periods, and the order of adjudication is made at any time other than one of such periods, the person entitled to such rent or payment may prove for a pro-

portionate part thereof up to the day of the adjudication as if such rent or payment grew due from day to day

36. Interest on any debt provable in bankruptcy may be allowed by the trustee under the same circumstances in which interest would have been allowable by a jury if an action had been brought for such debt.

37 If any bankrupt is at the date of the order of adjudication liable in respect of distinct contracts as a member of two or more distinct firms, or as a sole contractor, and also as member of a firm, the circumstance that such firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof in respect of such contracts, against the properties respectively liable upon such contracts.

38 Provides for an allowance to bankrupt for maintenance and service with the consent of creditors.

39. Provides that where there have been mutual dealings between the bankrupt and any claimant a set-off shall be allowed and the balance of account only shall be claimable or paid. But no person shall be entitled to this set-off if at the time of giving credit he had notice of an act of bankruptcy.

40 A creditor holding a specific security on the property of the bankrupt, or on any part thereof, may, on giving up his security, prove for his whole debt

He shall also be entitled to a dividend in respect of the balance due to him after realising or giving credit for the value of his security, in manner and at the time prescribed

A creditor holding such security as aforesaid and not complying with the foregoing conditions, shall be excluded from all share in any dividend.

Dividends

41 The trustee shall from time to time, when the Committee of Inspection determines, declare a dividend amongst the creditors who have proved to his satisfaction debts provable in bankruptcy, and shall distribute the same accordingly, and in the event of his not declaring a dividend for the space of six months, he shall summon a meeting of the creditors, and explain to them his reasons for not declaring the same

42 In the calculation and distribution of a dividend it shall be obligatory on the trustee to make provision for debts provable in bankruptcy appearing from the bankrupt's statements, or otherwise, to be due to persons resident in places so distant from the place where the trustee is acting that in the ordinary course of communication they have not had sufficient time to tender their proofs, or to establish them if disputed, and also for debts provable in bankruptcy, the subject of claims not yet determined.

43 Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any monies for the time being in the hand of the trustee any dividend or dividends he may have failed to receive before such monies are made applicable to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein

44 When the trustee has converted into money all the property of the bankrupt, or so much thereof as can, in the joint opinion of himself and of the Committee of Inspection be realised without needlessly protracting the bankruptcy, he shall declare a final

dividend, and give notice of the time at which it will be distributed

45 The bankrupt shall be entitled to any surplus remaining after payment of his creditors, and of the costs, charges, and expenses of the bankruptcy

46 No action or suit for a dividend shall lie against the trustee, but if the trustee refuses to pay any dividend the Court may, if it thinks fit, order the trustee to pay the same, and also to pay out of his own monies interest thereon for the time that it is withheld, and the costs of the application.

CHAPTER VI.

THE BANKRUPT'S DUTIES AND DISCHARGE.

1 *The bankrupt's conduct* as defined in *section* 19 in effect makes it necessary for him to do the same things, and file similar proceedings as under the old law. He is to attend the meetings of creditors, be examined, and produce the usual lists of his debts, and liabilities, and assets. He is also to wait upon the trustee when required; indeed, the main alteration is that most of his duties are to the trustee instead of to the Court. *Section* 19 is very important, containing, as it does, so many preliminary proceedings in every bankruptcy; but it is, on the whole, but a bare outline that will require much filling in by the rules that have to be framed.

2. *The close of bankruptcy* is one of the novelties contained in the new Act. *Section* 47 provides that when all the bankrupt's property has been realised, or so much thereof as can without needlessly protracting the bankruptcy, the trustee shall make a report to the Court, and the Court, if satisfied that such is the case, or that a composition or arrangement has been com-

pleted, may make an order closing such bankruptcy. A copy of this order is to be published in the *London Gazette*, and be deemed conclusive evidence.

3. *The order of discharge* is provided for by *section* 48, and here we have a very great alteration, both in the theory and practice of the old law. Under the Act of 1861 a bankrupt could obtain a complete discharge from all his debts without paying any dividend whatever. Cases of this kind occurred very frequently, and much fraud was encouraged. The creditors had to go to the Court and oppose, otherwise the Commissioner was bound to make the order. But the new Act, following out its principle of giving power to creditors and placing the debtor in their hands, has altered all this. As will be seen on reference to *section* 48, at the end of this chapter, the onus of proof is thrown upon the bankrupt. To obtain his discharge he must show to the satisfaction of the Court either that his estate has paid a dividend of not less than ten shillings in the pound, or would have done so but for the fraud or negligence of the trustee, or that his creditors have, by special resolution, agreed that his bankruptcy or failure to pay such a dividend arose without his fault, and that they wish an

order to be granted him. Under the Act of 1861 the Court had power to refuse or suspend an order of discharge on proof that the bankrupt had done certain things, such as contracted debts fraudulently, been reckless and extravagant, &c. It having been the aim of those who framed the new Act to send such offences for punishment to the Criminal Court, they will be found in the Debtor's Act, 1869, and will be treated of in our chapter on "Fraudulent Debtors." But in this *section* 48 it is provided that if the Court is satisfied that the bankrupt has made default in giving up his property, or that a prosecution has been commenced against him under the "Debtors' Act, 1869;" it may suspend or withhold altogether his order of discharge.

Section 49 gives the effect of an order of discharge similar to the old law, but it carefully provides that the bankrupt shall not be so released from any debt or liability incurred by means of fraud or breach of trust. Under the Act of 1831 Crown debts, though not mentioned, were not affected by the bankrupt laws; but here they are, with those due to the public revenue as penalties or on bail bonds, expressly excepted from the operation of the clause, with

the proviso that the Commissioners of the Treasury may give their written consent to his being discharged therefrom. The order is also made sufficient evidence of the bankruptcy, and its entire validity, so that if molested the bankrupt may plead that the cause of action occurred *before his discharge*, and give the Act and the special matter in evidence. This is similar to the like provision in the Act of 1861, only that there (s. 161) the words above printed in italics are differently rendered, for we read "*before he became bankrupt*," which has certainly another meaning. What is intended by the alteration we are unable to see, and must wait until the Court has had to construe its effect, although it will probably be held that the other words in the section restrict this meaning.

4. *The status of an undischarged bankrupt* is provided for by *section* 54, which contains an entirely new principle. Under the Act of 1861 a bankrupt whose discharge had been withheld or suspended was liable to the ordinary process of law at the suit of his creditors. But under the above section of the new Act no portion of a debt provable under his bankruptcy is to be enforced against the bankrupt until three years after the close of such bankruptcy. If, therefore,

a creditor should molest him it is presumed that he may, under *section* 13, apply to the Court to have such proceedings stayed upon such terms as it may think just. The bankrupt has thus three years in which to make up the required dividend of ten shillings in the pound, and upon doing this he will obtain his discharge. If, however, on the expiration of that time he has not satisfied this requisition, or, we presume, the creditors by the power given them in *section* 48 have not thought fit to excuse him on the ground of misfortune, any balance remaining unpaid in respect of any debt proved in the bankruptcy shall be declared to be a subsisting debt in the nature of a judgment debt, and may be enforced against the debtor with the sanction of the court which adjudicated him a bankrupt. But this will be subject to the right of any persons who have become creditors since the close of the bankruptcy, and to render this practicable the rules and orders will probably put forward some mode of proceeding by which these new creditors may have notice of what is going to be done with their debtor's property.

5 *As to power over bankrupt*, sections 85 and 86 make certain provisions. The former enacts that the Court may, upon the application of the

trustee, direct that all letters addressed to the bankrupt shall be sent to such trustee, and the Postmaster-General shall have the same done accordingly. This is precisely similar to a section in the Act of 1849, only that there the official assignee stood in the place of the trustee. *Section* 86 appears to be an extension of similar powers possessed by the Court under the Acts of 1849 and 1861. The Court may cause a debtor to be arrested, and all his goods, papers, books, &c., to be seized and kept as prescribed if there is probable reason for believing that he is about to quit England to avoid service of the petition, or examination, or otherwise to delay or embarrass the proceedings in bankruptcy. Or, if after the petition has been presented he appears to be about removing his goods to prevent them being taken possession of by the trustee, or is likely to conceal or destroy any books or documents that might be of use to the creditors. But clause 3 is the newest and most sweeping; it provides that a bankrupt may be arrested if after adjudication he "remove any goods or chattels in his possession above the value of five pounds without leave of the trustee, or if without good cause shown he fails to attend any examination ordered by the Court."

The Bankrupt's Conduct.

19 The bankrupt shall, to the utmost of his power, aid in the realization of his property, and the distribution of the proceeds amongst his creditors. He shall produce a statement of his affairs to the first meeting of creditors, and shall be publicly examined thereon on a day to be named by the Court, and subject to such adjourned public examination as this Court may direct. He shall give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, attend such meetings of his creditors, wait at such times on the trustee, execute such powers of attorney, conveyances, deeds, and instruments, and generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors, as may be reasonably required by the trustee, or may be prescribed by rules of Court, or be directed by the Court by any special order or orders made in reference to any particular bankruptcy, or made on the occasion of any special application by the trustee or any creditor.

If the bankrupt wilfully fail to perform the duties imposed on him by this section, or if he fail to deliver up possession to the trustee of any part of his property, which is divisible amongst his creditors under this Act, and which may for the time being be in the possession or under the control of such bankrupt, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of Court, and may be punished accordingly.

Close of Bankruptcy

47 When the whole property of the bankruptcy has been realized for the benefit of his creditors, or so much thereof as can, in the joint opinion of the trustee and

committee of inspection, be realized without needlessly protracting the bankruptcy, or a composition or arrangement has been completed, the trustee shall make a report accordingly to the Court, and the Court, if satisfied that the whole of the property of the bankrupt has been realized for the benefit of his creditors, or so much thereof as can be realized without needlessly protracting the bankruptcy, or that a composition or arrangement has been completed, shall make an order that the bankruptcy has closed, and the bankruptcy shall be deemed to have closed at and after the date of such order

A copy of the order closing the bankruptcy may be published in the *London Gazette*, and the production of a copy of such *Gazette* containing a copy of the order shall be conclusive evidence of the order having been made and of the nature and contents thereof

Discharge of Bankrupt.

48. When a bankruptcy is closed, or at any time during its continuance, with the assent of the creditors testified by a special resolution, the bankrupt may apply to the Court for an order of discharge; but such discharge shall not be granted unless it is proved to the Court that one of the following conditions has been fulfilled, that is to say, either that a dividend of not less than ten shillings in the pound has been paid out of his property, or might have been paid except through the negligence or fraud of the trustee, or that a special resolution of his creditors has been passed to the effect that his bankruptcy or the failure to pay ten shillings in the pound has, in their opinion, arisen from circumstances for which the bankrupt cannot justly be held responsible, and that they desire that an order of discharge should be granted to him, and the Court may suspend for such time as it deems to be just, or withhold altogether, the order of discharge in the circumstances

following, namely, if it appears to the Court on the representation of the creditors made by special resolution, of the truth of which representation the Court is satisfied, or by other sufficient evidence, that the bankrupt has made default in giving up to his creditors the property which he is required by this Act to give up, or that a prosecution has been commenced against him in pursuance of the provisions relating to the punishment of fraudulent debtors, contained in the "Debtor's Act, 1869," in respect of any offence alleged to have been committed by him against the said Act

49 An order of discharge shall not release the bankrupt from any debt or liability incurred by means of any fraud or breach of trust, nor for any debt or liability whereof he has obtained forbearance by any fraud, but it shall release the bankrupt from all other debts provable under the bankruptcy, with the exception of—

(1) Debts due to the Crown:

(2) Debts with which the bankrupt stands charged at the suit of the Crown or of any person for any offence against a statute relating to any branch of the public revenue, or at the suit of the sheriff or other public officer on a bail bond entered into for the appearance of any person prosecuted for any such offence:

And he shall not be discharged from such excepted debts unless the Commissioners of the Treasury certify in writing their consent to his being discharged therefrom

An order of discharge shall be sufficient evidence of the bankruptcy, and of the validity of the proceedings thereon, and in any proceedings that may be instituted against a bankrupt who has obtained an order of discharge in respect of any debt from which he is released by such order, the bankrupt may plead that the cause

of action occurred before his discharge, and may give this Act and the special matter in evidence.

50. The order of discharge shall not release any person who, at the date of the order of adjudication, was a partner with the bankrupt, or was jointly bound or had made any joint contract with him

Status of undischarged Bankrupt

54 Where a person who has been made bankrupt has not obtained his discharge, then, from and after the close of his bankruptcy, the following consequences shall ensue:

(1.) No portion of a debt provable under the bankruptcy shall be enforced against the property of the person so made bankrupt until the expiration of three years from the close of the bankruptcy; and during that time, if he pay to his creditors such additional sum as will, with the dividend paid out of his property during the bankruptcy, make up ten shillings in the pound, he shall be entitled to an order of discharge in the same manner as if a dividend of ten shillings in the pound had originally been paid out of his property.

(2.) At the expiration of a period of three years from the close of the bankruptcy, if the debtor made bankrupt has not obtained an order of discharge, any balance remaining unpaid in respect of any debt proved in such bankruptcy (but without interest in the meantime) shall be deemed to be a subsisting debt in the nature of a judgment debt, and, subject to the rights of any persons who have become creditors of the debtor since the close of his bankruptcy, may be enforced against any property of the debtor, with the sanction of the Court which adjudicated such debtor a bankrupt, or of the Court having jurisdiction in bankruptcy

in the place where the property is situated, but to the extent only, and at the time and in manner directed by such Court, and after giving such notice and doing such acts as may be prescribed in that behalf.

As to Power over Bankrupt.

85 The Court, upon the application of the trustee, may from time to time order that, for such time as the Court thinks fit, not exceeding three months from the date of the order of adjudication, post letters addressed to the bankrupt at any place or any of the places mentioned in the order, shall be re-directed, sent, or delivered by the Postmaster General or the officers acting under him, to the trustee or otherwise as the Court directs, and the same shall be done accordingly.

86. The Court may, by warrant addressed to any constable or prescribed officer of the Court, cause a debtor to be arrested, and any books, monies, goods, and chattels in his possession to be seized, and him and them to be safely kept as prescribed until such time as the Court may order, under the following circumstances

(1) If, after a petition of bankruptcy is presented against such debtor, it appear to the Court that there is probable reason for believing that he is about to go abroad or to quit his place of residence with a view of avoiding service of the petition, or of avoiding examination in respect of his affairs, or otherwise delaying or embarrassing the proceedings in bankruptcy

(2) If, after a petition in bankruptcy has been presented against such debtor, it appear to the Court that there is probable cause for believing that he is about to remove his goods and chattels with a view of preventing or delaying such goods or chattels

being taken possession of by the trustee, or that there is probable ground for believing that he has concealed or is about to conceal or destroy any of his goods or chattels, or any books, documents, or writings which might be of use to his creditors in the course of his bankruptcy ·

(3.) If, after the service of the petition on such debtor, or after an adjudication in bankruptcy against him, he remove any goods or chattels in his possession above the value of five pounds, without the leave of the trustee, or if, without good cause shown, he fails to attend any examination ordered by the Court

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CHAPTER VII.

PROCEDURE AND EVIDENCE.

1. *General proceedings* are regulated in many important particulars by *section* 80, which will be found at length in this chapter. It will be seen that most of the provisions are similar to those under the Act of 1861. By clause 7 a corporation may prove a debt, vote, or otherwise act in bankruptcy by an agent authorised under seal This will settle a point about which some doubt has lately been entertained, for it was thought that the secretary of a corporation having power as its agent to do all ordinary acts required in the business, might prove a debt without showing a special authority under seal By clause 8 a creditor may by an instrument in writing appoint a person to represent him in all matters relating to any debtor or his affairs. This is simply giving a creditor leave to sign a power of attorney to any one he chooses, and has always been the same. The other sections (81 and 32) need no comment.

2 *Joint and separate estates* are provided for by *sections* 100 to 105, they are similar to the

clauses of former acts, and because of their practical importance we have given them *verbatim*.

3 *Evidence.—Section* 106 provides that the Registrar or any person presiding at a meeting shall keep a minute of the resolutions, and such minute, if purporting to be signed by the chairman, shall be received as evidence in all legal proceedings. There will, doubtless, be forms given of both resolutions and minutes, or else we fear some confusion would result to creditors managing their debtors' estates for themselves The section also makes the necessary provision that until the contrary is proved all such meetings and resolutions shall be deemed regular and valid. *Sections* 107 *to* 109 provide for the receiving sealed copies of proceedings in evidence, for the validity of a deposition of a witness since dead, and for every bankruptcy court to have a seal of its own. These provisions contain nothing new, but being of some practical importance we have given them *verbatim*.

4. *Miscellaneous* —Among the sections ranged in the Act under this heading is 113, which provides that no deed of any kind used in bankruptcy shall require the stamp duty to be paid upon it, except in respect of the fees to be taken

under the Act itself So that any deed of composition, assignment, or otherwise will not require a deed stamp, but it is probable that the fees taken will make the actual payment much the same as formerly, though the new mode of doing so may prove more convenient. *Section* 115, by enacting that an annual report shall be made by the Comptroller, both judicial and financial, and laid before Parliament, will give the general public an easy way of finding out the actual practical working of the new law. *Section* 116 provides that dividends unclaimed for five years (we presume the reckoning would be from the close of the bankruptcy) shall be forfeited and vest in the Commissioners of the Treasury, subject to the power given to any court having jurisdiction to order the money to be repaid upon proof of disability, absence abroad, or any other sufficient cause.

5 *Persons having privilege of Parliament.* We think it is clearly settled by the new Act that a peer can in all cases be made bankrupt, for *section* 120 is very explicit in providing that "if a person having privilege of Parliament commits an act of bankruptcy he may be dealt with under this act in like manner as if he had not such privilege." See also *sections* 121 *to* 124

As to Proceedings.

80 The following regulations shall be made with respect to proceedings in bankruptcy, namely,

(1.) Every bankruptcy petition shall be accompanied by an affidavit of the petitioner in the prescribed form, verifying the statements contained in such petition:

(2.) Where two or more bankruptcy petitions are presented against the same debtor or against debtors being members of the same partnership, the Court may consolidate the proceedings, or any of them, upon such terms as the Court thinks fit.

(3.) Where proceedings against the debtors are instituted in more Courts than one the London Court of Bankruptcy may, on the application of any creditor, direct the transfer of such proceedings to the London Court of Bankruptcy, or to any local Bankruptcy Court:

(4.) Where the petitioner does not proceed with due diligence on his petition the Court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Act in the case of a petitioning creditor

(5.) Where the creditors resolve by a special resolution that it will be more convenient that the proceedings in any local Bankruptcy Court should be transferred to the London Court or to some other local Court, or where the judge of a local Court certifies that in his opinion the bankruptcy would be more advantageously conducted in the London Court or in some other local Court, and the creditors do not by resolution object to the transfer, the petition shall be transferred to and all subsequent proceedings thereon had in the London Court or such other local Court:

(6) Subject to the provisions of this Act, every Court having original jurisdiction in bankruptcy shall be deemed to be the same Court, and to have jurisdiction throughout England; and cases may be transferred from one Court to another in such manner as may be prescribed

(7) A corporation may prove a debt vote, or otherwise act in bankruptcy by an agent duly authorized under the seal of the corporation .

(8.) A creditor may, in the prescribed manner, by instrument in writing, appoint a person to represent him in all matters relating to any debtor or his affairs in which a creditor is concerned in pursuance of this Act, and such representative shall thereupon, for all the purposes of this Act, stand in the same position as the creditor who appointed him

(9) When a debtor who has been adjudicated a bankrupt dies, the Court may order that the proceedings in the matter be continued as if he were alive :

(10) The Court may, at any time, on proof to its satisfaction that proceedings in bankruptcy ought to be stayed, by reason that negotiations are pending for the liquidation of the affairs of the bankrupt by arrangement or for the acceptance of a composition by the creditors in pursuance of the provisions hereinafter contained, or on proof to its satisfaction of any other sufficient reason for staying the same, make an order staying the same, either altogether or for a limited time, on such terms and subject to such condit as the Court may think just.

81 Whenever any adjudication in bankruptcy is annulled all sales and dispositions of property and payments duly made, and all acts theretofore done, by the trustee or any person acting under his authority, or by

the Court, shall be valid, but the property of the debtor who was adjudged a bankrupt shall in such case vest in such person as the Court may appoint, or in default of any such appointment revert to the bankrupt for all his estate or interest therein upon such terms and subject to such conditions, if any, as the Court may declare by order A copy of the order of the Court annulling the adjudication of a debtor as a bankrupt shall be forthwith published in the *London Gazette* and advertised locally in the prescribed manner, and the production of a copy of the *Gazette* containing such order shall be conclusive evidence of the fact of the adjudication having been annulled, and of the terms of the order annulling the same

82 No proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the Court before which an objection is made to such proceeding is of opinion that substantial injustice has been caused by such defect or irregularity, and that such injustice cannot be remedied by any order of the Court

Joint and separate Estates.

100. Any creditor whose debt is sufficient to entitle him to present a bankruptcy petition against all the partners of a firm may present such petition against any one or more partners of such firm without including the others.

101. Where there are more respondents than one to a petition, the Court may dismiss the petition as to one or more of them, without prejudice to the effect of the petition as against the other or others of them

102 Where one member of a partnership has been adjudicated a bankrupt, any other petition for adjudication against a member of the same partnership shall be filed in or transferred to the Court in which the first-

mentioned petition is in course of prosecution, and, unless the Court otherwise directs, the property of such last-mentioned member shall vest in the trustee appointed in respect of the property of the first-mentioned member of the partnership, and the Court may give such directions for amalgamating the proceedings in respect of the properties of the members of the same partnership as it thinks just

103. If one partner of a firm is adjudged bankrupt, any creditor to whom the bankrupt is indebted jointly with the other partners of the firm, or any of them, may prove his debt for the purpose of voting at any meeting of creditors, and shall be entitled to vote thereat, but shall not receive any dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts

104 Where joint and separate properties are being administered, dividends of the joint and separate properties shall, subject to any order to the contrary that may be made by the Court on the application of any person interested, be declared together, and the expenses of and incident to such dividends shall be fairly apportioned by the trustee between the joint and separate properties, regard being had to the work done for and the benefit received by each property.

105 Where a member of partnership is adjudged bankrupt, the Court may authorize the trustee, with consent of the creditors, certified by a special resolution, to commence and prosecute any action or suit in the names of the trustee and of the bankrupt's partner; and any release by such partner of the debt or demand to which the action or suit relates shall be void, but notice of the application for authority to commence the action or suit shall be given to such partner, and he may show cause against it, and on his application the Court may, if it thinks fit, direct that he shall receive

his proper share of the proceeds of the action or suit, and if he does not claim any benefit therefrom he shall be indemnified against costs in respect thereof as the Court directs

Evidence

106. The registrar, or any other person presiding at a meeting of creditors under this Act, shall cause minutes to be kept and duly entered in a book of all resolutions and proceedings of such meeting, and any such minute as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had, shall be received as evidence in all legal proceedings; and, until the contrary is proved, every general meeting of the creditors in respect of the proceedings of which minutes have been so made shall be deemed to have been duly held and convened, and all resolutions passed thereat or proceedings had to have been duly passed and had

107 Any petition or copy of a petition in bankruptcy, any order or copy of an order made by any Court having jurisdiction in bankruptcy, any certificate or copy of a certificate made by any Court having jurisdiction in bankruptcy, any deed or copy of a deed of arrangement in bankruptcy, and any other instrument or copy of an instrument, affidavit, or document made or used in the course in any bankruptcy proceedings, or other proceedings had under this Act. may, if any such instrument as aforesaid or copy of an instrument appears to be sealed with the seal of any Court having jurisdiction, or purports to be signed by any judge having jurisdiction in bankruptcy under this Act, be receivable in evidence in all legal proceedings whatever.

108 In case of the death of the bankrupt or his wife, or of a witness whose evidence has been received

by any Court in any proceeding under this Act, the deposition of the person so deceased, purporting to be sealed with the seal of the Court, or a copy thereof purporting to be so sealed, shall be admitted as evidence of the matters therein deposed to

109 Every Court having jurisdiction in bankruptcy under this Act shall have a seal describing such Court in such manner as may be directed by order of the Lord Chancellor, and judicial notice shall be taken of such seal, and of the signature of the judge or registrar of any such Court, in all legal proceedings

Miscellaneous.

110 Where a registrar under the authority of this Act attends at any place for the purpose of presiding at a meeting of creditors, or of receiving proofs, or of otherwise acting under this Act, his travelling and incidental expenses incurred in so doing, and those of any clerk or officer attending him, shall, after being settled by the Court, be paid out of the bankrupt's property, if sufficient, and otherwise shall be deemed part of the expenses of the Court

111 Any person to whom anything in action belonging to the bankrupt is assigned in pursuance of this Act may bring or defend any action or suit relating to such thing in action in his own name

112. Where a bankrupt is a contractor in respect of any contract jointly with any other person or persons, such person or persons may sue or be sued in respect of such contract, without the joinder of the bankrupt.

113 Every deed, conveyance, assignment, surrender, admission, or other assurance relating solely to freehold, leasehold, copyhold, or customary property, or to any mortgage, charge, or other incumbrance on, or any estate, right, or interest in any real or personal property which is part of the estate of any bankrupt, and which

after the execution of such deed, conveyance, assignment, surrender, admission, or other assurance, either at law or in equity, is or remains the estate of the bankrupt, or of the trustee under the bankruptcy, and every power of attorney, proxy, paper, writ, order, certificate, affidavit, bond, or other instrument or writing relating solely to the property of any bankrupt, or to any proceeding under any bankruptcy, shall be exempt from stamp duty (except in respect of fees under this Act)

114. Provides that the time allowed for doing an act, from or after any date or event, will be reckoned exclusive of such date, beginning, therefore, on the next day, and the act shall be done on the last day, unless it should fall on any of the usual exceptions—Sundays, festivals, &c, then on the following day, the same if an act is to be done on a particular day

115. Provides that the Registrar and other officers shall make returns to the comptroller, who is to make a general annual report to the Lord Chancellor, judicial and financial, which report shall be laid before both Houses of Parliament

Forfeiture of Dividends.

116 Where any dividends remain unclaimed for five years then and in every such case the same shall be deemed vested in the Crown, and shall be disposed of as the Commissioners of Her Majesty's Treasury direct, provided, that at any time after such vesting the Lord Chancellor or any Court authorised by him may, by reason of the disability or absence beyond seas of the person entitled to the sum so vested, or for any other reason appearing to him sufficient, direct that the said sum shall be repaid out of money provided by Parliament

117 Where a bankrupt is a trustee within the

Trustee Act, 1850, section thirty-two of that Act shall have effect so as to authorise the Court to appoint a new trustee in substitution for the bankrupt (whether voluntarily resigning or not), if it appears to the Court expedient to do so, and all provisions of that Act, and of any other Act relative thereto, shall have effect accordingly.

118 No person, not being a trader, shall be adjudged a bankrupt in respect of a debt contracted before the date of the passing of the Bankruptcy Act, 1861

119 Where in any Act of Parliament, instrument, or proceeding passed, executed, or taken before the commencement of this Act mention is made of a commission of bankruptcy or fiat in bankruptcy, the same shall be construed, with reference to the proceedings under a petition for adjudication of bankruptcy as if a commission of, or a fiat in, bankruptcy had been actually issued at the time of the presentation of such petition.

Persons having Privilege of Parliament

120 If a person having privilege of Parliament commits an act of bankruptcy he may be dealt with under this Act in like manner as if he had not such privilege

121 Provides that a bankrupt Member of the House of Commons shall be incapable of sitting for one year after adjudication, unless the bankruptcy is annulled or the creditors are satisfied either by payment or bond.

122 Enacts that if neither of the above be done, at the end of one year the Court is to certify such fact to the Speaker, and thereupon the seat of such Member shall be vacant

123 Provides for the Speaker advertising certificate in the *London Gazette*, and issuing a new writ.

124 Extends the provisions of 24 Geo III sess 2, c. 26, relating to the election of members, to cases of bankruptcy

CHAPTER VIII.

LIQUIDATIONS AND COMPOSITIONS.

1. *Liquidation by arrangement* is a new mode of proceeding introduced by the last Act. It is similar to a bankruptcy, except that the Court has but little power over the creditors, and there is no advertisement required. *Section* 125 contains the regulations, and provides that the debtor shall begin by calling a general meeting of his creditors. This meeting and all its incidents of proving debts and voting is the same as in bankruptcy, the two trivial differences being that a statutory declaration shall be substituted for an oath, and that a chairman elected by the meeting shall preside instead of the Registrar. The debtor's conduct, as defined in *clause* 3, is similar to that of a bankrupt, and upon the special resolution and names of the trustee and committee being presented to the Registrar he is to examine and register them. This is very like the adjudication upon a petition, and here, as in bankruptcy, the trustee will receive a certificate of his appointment, given by the Registrar. The liquidation by arrangement shall be deemed to

have commenced from such appointment. By clause 7 the trustee of a liquidation has the same power as in bankruptcy, and it is also enacted that all the provisions relating to bankruptcy shall, with certain exceptions, apply to a liquidation by arrangement. By clause 9 the close of the liquidation may be fixed, and the release of the trustee granted by a special resolution of creditors, and clause 10 provides that the trustee shall report to the Registrar the discharge of the debtor, and a certificate of such discharge given by the Registrar shall have the same effect as an order of discharge in bankruptcy. If it appear to the Court that a liquidation cannot for any reason be satisfactorily carried out the Court may adjudge the debtor a bankrupt Clause 14 provides that in calculating a majority, creditors for debts under £10 shall be reckoned in value but not in number. The rules of Court that by clause 11 are to be made for this important section of the Act will, doubtless, make this new plan of procedure much more clear and practicable

2 *Composition with Creditors*—*Section* 126 gives in a bare outline the whole law upon this subject, all other previous acts being repealed. The rules may do much to fill in many requisite

details, but there seems to be several important defects that it will not be so easy to remedy. The section is here given *verbatim*; but we will first point out the most important clauses. The debtor begins by summoning a general meeting of his creditors, for without this nothing can be done, and they may by an extraordinary resolution agree that a certain composition shall be accepted by them from the debtor Now, an extraordinary resolution is rather a complicated affair, and consists of two parts. First, the creditors must pass a special resolution, as in the case of a liquidation, that is one agreed to by a majority in number and three-fourths in value. Second, this resolution must be confirmed by another passed by a majority in number and value of the creditors assembled at a subsequent general meeting held at an interval of not less than a week or more than a fortnight from the date of the first meeting. Both these meetings have to be held in the prescribed manner, and notice has to be given of them. there will, therefore, be a good deal of work in such cases, the details of which cannot be yet specified The third paragraph of the section provides that creditors whose debts are below £10 shall be reckoned in the majority in value, but not in

number, and that the value of the debts of secured creditors shall be estimated as in bankruptcy. We also read that "the same description of creditors shall be entitled to vote at such general meeting as in bankruptcy." By clause 4 it is provided that the debtor is to attend the meetings unless prevented by sickness or other unavoidable cause, when he may send a representative; but in either case he shall produce to the meeting a statement showing the whole of his assets and debts, and the names and addresses of his respective creditors. This statement will need to be full and accurate, for the acceptance of a composition will only bind those creditors therein contained. The extraordinary resolution, together with the above statement, are then to be presented to the Registrar, and if satisfied with their validity he shall register both resolution and statement. By *section* 127 it is provided that the registration of either the special resolution for a liquidation or the extraordinary resolution for a composition shall, in the absence of fraud, be deemed conclusive evidence that such resolutions were duly passed and all the requisitions of the Act in that respect complied with.

Regulations.

125 The following regulations shall be made with respect to the liquidation by arrangement of the affairs of the debtor

(1). A debtor unable to pay his debts may summon a general meeting of his creditors, and such general meeting may, by a special resolution as defined by this Act, declare that the affairs of the debtor are to be liquidated by arrangement and not in bankruptcy, and may at that or some subsequent meeting, held at an interval of not more than a week, appoint a trustee, with or without a committee of inspection.

(2) All the provisions of this Act relating to a first meeting of creditors, and to subsequent meetings of creditors in the case of a bankruptcy, including the description of creditors entitled to vote at such meetings, and the debts in respect of which they are entitled to vote, shall apply respectively to the first meeting of creditors, and to subsequent meetings of creditors, for the purposes of this section, subject to the following modifications:

(*a*) That every such meeting shall be presided over by such chairman as the meeting may elect; and

(*b*) That no creditor shall be entitled to vote until he has proved by a statutory declaration a debt provable in bankruptcy to be due to him, and the amount of such debt, with any prescribed particulars, and any person wilfully making a false declaration in relation to such debt shall be guilty of a misdemeanour

(3) The debtor, unless prevented by sickness or other cause satisfactory to such meeting, shall be

present at the meeting at which the special resolution is passed, and shall answer any inquiries made of him, and he, or, if he is so prevented from being at such meeting, some one on his behalf, shall produce to the meeting a statement showing the whole of his assets and debts, and the names and addresses of the creditors to whom his debts are due.

(4.) The special resolution, together with the statement of the assets and debts of the debtor, and the name of the trustee appointed, and of the members, if any, of the committee of inspection, shall be presented to the registrar, and it shall be his duty to inquire whether such resolution has been passed in manner directed by this section, but if satisfied that it was so passed, and that a trustee has been appointed with or without a committee of inspection, he shall forthwith register the resolution and the statement of the assets and debts of the debtor, and such resolution and statement shall be open for inspection on the prescribed conditions, and the liquidation by arrangement shall be deemed to have commenced as from the date of the appointment of the trustee

(5) All such property of the debtor as would, if he were made bankrupt, be divisible amongst his creditors shall, from and after the date of the appointment of a trustee, vest in such trustee under a liquidation by arrangement, and be divisible amongst the creditors, and all such settlements, conveyances, transfers, charges, payments, obligations, and proceedings as would be void against the trustee in the case of a bankruptcy shall be void against the trustee in the case of a liquidation by arrangement

(6) The certificate of the registrar in respect of

the appointment of any trustee in the case of a liquidation by arrangement shall be of the same effect as a certificate of the court to the like effect in the case of a bankruptcy.

(7.) The trustee under a liquidation shall have the same powers, and perform the same duties, as a trustee under a bankruptcy, and the property of the debtor shall be distributed in the same manner as in a bankruptcy, and with the modification hereinafter mentioned all the provisions of this Act shall, so far as the same are applicable, apply to the case of a liquidation by arrangement in the same manner as if the word "bankrupt" included a debtor whose affairs are under liquidation, and the word "bankruptcy" included liquidation by arrangement; and in construing such provisions the appointment of a trustee under a liquidation shall, according to circumstances, be deemed to be equivalent to and a substitute for the presentation of a petition in bankruptcy, or the service of such petition or an order of adjudication in bankruptcy.

(8.) The creditors at their first or any general meeting may prescribe the bank into which the trustee is to pay any monies received by him, and the sum which he may retain in his hands.

(9.) The provisions of this Act with respect to the close of a bankruptcy, discharge of a bankrupt, to the release of the trustee, and to the audit of accounts by the comptroller shall not apply in the case of a debtor whose affairs are under liquidation by arrangement, but the close of the liquidation may be fixed, and the discharge of the debtor and the release of the trustee may be granted by a special resolution of the creditors in a general meeting, and the accounts may be audited in pursuance of such resolution, at such

time and in such manner and upon such terms and conditions as the creditors think fit

(10) The trustee shall report to the registrar the discharge of the debtor, and a certificate of such discharge given by the registrar shall have the same effect as an order of discharge given to a bankrupt under this Act.

(11) Rules of Court may be made in relation to proceedings on the occasion of liquidation by arrangement in the same manner and to the same extent and of the same authority as in respect of proceedings in bankruptcy.

(12) If it appear to the Court on satisfactory evidence that the liquidation by arrangement cannot, in consequence of legal difficulties, or of there being no trustee for the time being, or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, the Court may adjudge the debtor a bankrupt, and proceedings may be had accordingly.

(13.) Where no committee of inspection is appointed the trustee may act on his own discretion in cases where he would otherwise have been bound to refer to such committee.

(14) In calculating a majority on a special resolution for the purposes of this section, creditors whose debts amount to sums not exceeding ten pounds shall be reckoned in the majority in value, but not in the majority in number

Composition with Creditors

Regulations.

126 The creditors of a debtor unable to pay his debts may, without any proceedings in bankruptcy, by an extraordinary resolution, resolve that a composition

shall be accepted in satisfaction of the debts due to them from the debtor.

An extraordinary resolution of creditors shall be a resolution which has been passed by a majority in number and three-fourths in value of the creditors of the debtor, assembled at a general meeting to be held in the manner prescribed, of which notice has been given in the prescribed manner, and has been confirmed by a majority in number and value of the creditors assembled at a subsequent general meeting, of which notice has been given in the prescribed manner, and held at an interval of not less than seven days nor more than fourteen days from the date of the meeting at which such resolution was first passed.

In calculating a majority for the purpose of a composition under this section, creditors whose debts amount to sums not exceeding ten pounds shall be reckoned in the majority in value, but not in the majority in number, and the value of the debts of secured creditors shall, as nearly as circumstances admit, be estimated in the same way, and the same description of creditors shall be entitled to vote at such general meetings as in bankruptcy

The debtor, unless prevented by sickness or other cause satisfactory to such meetings, shall be present at both the meetings at which the extraordinary resolution is passed, and shall answer any inquiries made of him, and he, or if he is so prevented from being at such meetings some one on his behalf, shall produce to the meetings a statement showing the whole of his assets and debts, and the names and addresses of the creditors to whom such debts respectively are due

The extraordinary resolution, together with the statement of the debtors as to his assets and debts, shall be presented to the registrar, and it shall be his duty to inquire whether such resolution has been passed in manner directed by this section, and if satisfied that it has been so passed, he shall forthwith register the resolution and statement of assets and debts, but until

such registration has taken place such resolution shall be of no validity, and any creditor of the debtor may inspect such statement at prescribed times, and on payment of such fee, if any, as may be prescribed

The creditors may, by an extraordinary resolution, add to or vary the provisions of any compositions previously accepted by them, without prejudice to any persons taking interests under such provisions who do not assent to such addition or variation; and any such extraordinary resolution shall be presented to the registrar in the same manner and with the same consequences as the extraordinary resolution by which the composition was accepted in the first instance.

The provisions of a composition accepted by an extraordinary resolution in pursuance of this section shall be binding on all the creditors whose names and addresses, and the amount of the debts due to whom are shown in the statement of the debtor, produced at the meetings at which the resolution has passed, but shall not affect or prejudice the rights of any other creditors

Where a debt arises on a bill of exchange or promissory note, if the debtor is ignorant of the holder of any such bill of exchange or promissory note, he shall be required to state the amount of such bill or note, the date on which it falls due, the name of the acceptor or person to whom it is payable, and any other particulars within his knowledge respecting the same, and the insertion of such particulars shall be deemed a sufficient description of the creditor of the debtor in respect of such debt, and any mistake made inadvertently by a debtor in the statement of his debts may be corrected after the prescribed notice has been given, with the consent of a general meeting of his creditors.

The provisions of any composition made in pursuance of this section may be enforced by the Court on a motion made in a summary manner by any person interested, and any disobedience of the order of the Court

made on such motion shall be deemed to be a contempt of Court

Rules of Court may be made in relation to proceedings on the occasion of the acceptance of a composition by an extraordinary resolution of creditors in the same manner and to the same extent and of the same authority as in respect of proceedings in bankruptcy.

If it appear to the Court on satisfactory evidence that a composition under this section cannot, in consequence of legal difficulties, or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, the Court may adjudge the debtor a bankrupt, and proceedings may be had accordingly

127 The registration by the registrar of a special resolution of the creditors on the occasion of a liquidation by arrangement under Part Six of this Act, or of an extraordinary resolution of the creditors on the occasion of a composition under the Seventh Part of this Act, shall, in the absence of fraud, be conclusive evidence that such resolutions respectively were duly passed, and all the requisitions of this Act in respect of such resolutions complied with

CHAPTER IX.

CONSTITUTION AND POWERS OF COURT.

1. *The appointment of Comptroller—his duties and powers* will be found in *sections* 55 *to* 58. The Committee of Inspection is the creditors' check upon their trustee; but as it was most desirable that the Court also should have some power over his proceedings, such has been provided in the convenient form of a Comptroller. It is a new office, introduced, we believe, for the first time into bankruptcy law. The nearest approach to it under former acts being the accountant in bankruptcy, almost a sinecure. The Comptroller is to be appointed by the Lord Chancellor, with the sanction of the Treasury. The trustee has to make a quarterly statement of account, and have it audited by the Committee of Inspection; but he has also by *section* 56 from time to time as may be prescribed, and not less than once a year to transmit to the Comptroller a statement showing the proceedings in the bankruptcy up to its date. This will be a form to be prescribed by general orders, but upon the trustee's failing to do so he may be punished for

a contempt of Court. The Comptroller has then to examine his statement, and he may be called upon to account for any neglect or omission that may appear, the trustee being also liable to make good any loss to the estate that may have arisen through his fault upon the request of the Comptroller, who, if he fails to do so is to report it to the Court. The Comptroller has very ample powers given him by *section* 58 for inquiring into the truth of the trustee's statement. He may apply to the Court to have such trustee or any one else examined concerning the bankruptcy, and may direct a local investigation to be made of the books and vouchers of the trustee.

2. *The district of the London Court* as defined in *section* 60, shall include the city of London, its liberties, and the districts of the metropolitan county courts contained in *schedule* 2 at the end of this chapter. Its jurisdiction will extend to all persons residing or carrying on business within these limits as well as to those who are not resident in England. The division as to amount, which in some instances gave a different court for cases above and below £300 is gone

3 *The County Courts* are by *section* 59 made local bankruptcy courts. Where the person

sought to be adjudged a bankrupt does not carry on business or reside within the London district above described, then the Court where his case must go shall be, subject to the provisions for removing the proceedings nearer the county court for the district in which he lives or carries on business. By *section* 66 it is provided that every judge of a local court of bankruptcy shall in addition to his ordinary powers have all the jurisdiction and authority of a judge in chancery. *Section* 79 provides that the Lord Chancellor may by order under his hand from time to time exclude any county court from having jurisdiction in bankruptcy, and may attach its district to another county court. By *section* 130 country district courts are abolished, and the pending business therein is to be disposed of by the Registrar or transferred as the Lord Chancellor may order A very useful and important provision is contained in *section* 80, *clause* 5, to the effect that where the creditors by special resolution agree that it would be more convenient if the proceedings in the local court were transferred to the London court, such shall be done accordingly The same result will follow where the judge of a local court certifies that such a transfer would be expedient, and the creditors do not by resolution object.

4. *The constitution of the London Court* is described in *section* 61. It is to consist of a Chief Judge, and, subject to various temporary provisions, of such registrars, not exceeding four, and other officers as he, the Judge, may with the sanction of the Treasury appoint.

5. *Appeals.*—By *section* 71 it is provided that there shall be an appeal from the decision of a local court to the chief judge in London. This is a new enactment, for under the former acts the only appeal from the country district courts was to the Lords Justices. But suitors not satisfied with the decision of the Chief Judge may in all cases, after complying with certain requirements that the rules of Court will settle, take their cases up to the Lords Justices, and thence to the House of Lords

6. *The general power of Bankruptcy Courts* as given by *section* 72 is very extensive. They may decide all questions of priorities and all matters of law and fact. They have both an equitable and common law jurisdiction, and have in fact a general jurisdiction for the purpose of doing complete justice in all cases, and affecting a full distribution of a bankrupt's property. They may also order a trial to be had before a jury in the same manner—if the London Court—as if it were before one of the superior courts of com-

mon law, and in a county court, as is usual in ordinary cases. There are also various other provisions upon which it is unnecessary to make any comment. *Section* 78 gives ample powers to make general rules, with a provision that until such is done the ordinary rules shall be in force.

7 *Temporary Provisions*.—*Section* 128 releases the commissioners from their office on the 1st of January next, except as to the commissioner chosen to be chief judge. A difficulty in practice may, therefore, arise with respect to the last examination and order of discharge meetings in pending business, almost certain to be a large number, and unless the words of *section* 129 permit the employment of registrars or commissioners to hear such cases, the chief judge will be burthened for several months with all the work of the present three commissioners, in addition to the various duties of his new office. The doubt as to the Registrar's power to wind up the old business arises from the words of that section that their duties are to be "analogous to those which they have hitherto performed in the old Bankruptcy Court," and that by *section* 130, affecting pending business in the district courts, "such part of the business as the Lord Chancellor thinks fit is to be disposed of by the registrars."

The Comptroller

55 Provides that the Trustee shall, after his quarterly statement of accounts has been audited by the Committee of Inspection, forward such certified statement to the comptroller in bankruptcy ; upon failing to do this he may be punished for contempt of court The comptroller is to be appointed by the Lord Chancellor and to be provided with an office and competent staff in London.

56 Enacts that every trustee shall from time to time, as may be prescribed, and not less than once a year, send to the comptroller a statement showing the proceedings in the bankruptcy up to its date, or be guilty of contempt of Court.

57. The comptroller shall examine the statements transmitted to him, and shall call the trustee to account for any misfeasance, neglect, or omission which may appear on such statements, and may require the trustee to make good any loss the estate of the bankrupt may have sustained by such misfeasance, neglect, or omission If the trustee fail to comply with such requisition of the comptroller, the comptroller may report the same to the Court, and the Court, after hearing the explanation, if any, of the trustee, shall make such order in the premises as it thinks just

58. The comptroller may at any time require any trustee to answer any inquiry made by him in relation to any bankruptcy in which such trustee is engaged, and may, if he think fit, apply to the Court to examine on oath such trustee or any other person concerning such bankruptcy; he may also direct a local investigation to be made of the books and vouchers of the trustees

Description of Court, &c

59 From and after the commencement of this Act

the following provisions shall take effect with respect to the Courts having jurisdiction in bankruptcy, and their officers; that is to say,

If the person sought to be adjudged a bankrupt reside or carry on business within the London Bankruptcy District as hereinafter defined, or be not resident in England, then "the Court" shall mean, for the purposes of this Act, the Court of Bankruptcy in London as constituted by this Act, and hereinafter referred to as the London Bankruptcy Court

If the person sought to be adjudged a bankrupt, being resident in England, do not reside or carry on business within the London Bankruptcy District, then "the Court" shall, subject to the provisions hereinafter contained for removing the proceedings, mean the county court of the district in which such person resides or carries on business, hereinafter referred to as the local Bankruptcy Court.

60 The London Bankruptcy District shall, for the purposes of this Act, comprise the following places; that is to say, the city of London and the liberties thereof, and all such parts of the metropolis and other places as are situated within the district of any county court described as a metropolitan county court in the list contained in the second schedule hereto

61 Provides that the London Court shall consist of a Chief Judge, and not more than four registrars, with such other clerks and subordinate officers as the judge may determine with the sanction of the Treasury. Subject to the provisions of the Act with respect to the first chief judge, that office shall be filled by any judge either at common law or equity, as with his assent the Lord Chancellor may appoint; he shall hold the office of chief judge in addition to his usual duties

62 Provides that, subject to certain temporary pro-

visions, the Chief Judge may appoint or remove any registrar or other officer in his discretion.

63 Enacts that the usual salaries shall be paid out of monies provided by Parliament to such amount as the Chief Judge, with the sanction of the Treasury, may determine.

64. Provides that the registrars and other officers shall perform such duties as may be assigned to them by the Chief Judge, with the assent of the Lord Chancellor

65 Enacts that the London Court of Bankruptcy shall continue to be a Court of law and equity, and a principal Court of record, the Chief Judge having all the powers of a judge at Westminster or in Chancery, and his orders being of similar force It is also provided that "the Chief Judge in Bankruptcy may sit in chambers, and when in chambers shall have the same jurisdiction and exercise the same powers as if sitting in open court"

66 Gives to every judge of a local Court of Bankruptcy the extra powers and jurisdiction of a judge in Chancery

67 The Chief Judge in Bankruptcy and every judge of a local Court of Bankruptcy may, subject and in accordance with the rules of Court for the time being in force, delegate to the registrar or to any other officer of his court such of the powers vested in him by this Act as it may be expedient for the judge to delegate to him

68 Provides that the Lord Chancellor shall, with the sanction of the Treasury, prescribe a scale of fees for all business done under this Act, the Treasury to direct whether the same shall be imposed by stamps or otherwise, and as to their collection and appropriation

69 Enacts that no Judge, Registrar, or other officer shall, during the continuance of his office, sit in Parlia-

ment, neither shall he in any way act as solicitor in a bankruptcy under pain of being dismissed by the judge of his Court, such dismissal to be in writing, a copy thereof to be sent to the Chief Judge, who may reinstate such officer

70 Every attorney and solicitor of the Superior Courts shall be, and may practise as a solicitor of and in the Court of Bankruptcy, and in matters before the Chief Judge or registrars, in the London Court of Bankruptcy, in court or in chambers, may appear and be heard without being required to employ counsel, and if any person not being such attorney or solicitor practises in the Court of Bankruptcy as attorney or solicitor, he shall be deemed guilty of a contempt of the Court

Appeals.

71 Every Court having jurisdiction in bankruptcy under this Act may review, rescind, or vary any order made by it in pursuance of this Act. Any person aggrieved by any order of a local Bankruptcy Court in respect of a matter of fact or of law made in pursuance of this Act may appeal to the Chief Judge in Bankruptcy, and it shall be lawful for such judge to alter, reverse, or confirm such order as he thinks just. Any order made by the Chief Judge in Bankruptcy, whether in respect of a matter brought before him on appeal or not, shall be subject to an appeal to the Court of Appeal in Chancery (which Court, for the purpose of this Act, shall be and form a Court of Record, and shall have all the jurisdiction, powers, and authorities of the Court of Bankruptcy, to be exerciseable either originally or on appeal, and shall have all the powers and authorities of the Court of Chancery relative to the trial of questions of fact, by jury, issue, or otherwise), and also, with the leave of the Court of Appeal, to the House of Lords, but no appeal shall be entertained under this Act except in conformity to such rules of court as

may for the time being be in force in relation to such appeal

General Powers of Bankruptcy Courts.

72 Subject to the provisions of this Act, every Court having jurisdiction in bankruptcy under this Act shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or fact, arising in any case of bankruptcy coming within the cognizance of such Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case, and no such Court as aforesaid shall be subject to be restrained in the execution of its powers under this Act by the order of any other Court, nor shall any appeal lie from its decisions, except in manner directed by this Act; and if in any proceeding in bankruptcy there arises any question of fact which the parties desire to be tried before a jury, the Court may direct such trial to be had, and such trial may be had accordingly, in the London Court of Bankruptcy, in the same manner as if it were the trial of an issue in one of the superior Courts of Common Law, and in the County Court in the manner in which jury trials in ordinary cases are by law held in such Court.

73 Provides that the Orders of the English Courts shall be enforced in Scotland and Ireland in courts having jurisdiction in bankruptcy, and any order made in the United Kingdom shall be enforced in like manner where required, as if it had been made by such court in a bankruptcy within its own jurisdiction

74 Enacts that the Court in London, the local Courts and all Bankruptcy Courts in Scotland or Ireland or elsewhere shall be auxiliary to each other respectively, and an order of any Court seeking aid shall be sufficient to give another court sufficient jurisdiction for such purpose

75. Provides that any English Court of Bankruptcy may order a person being in Scotland or in Ireland to to be examined there.

76 Enacts that any warrant of an English Court may be enforced in Scotland, Ireland, the Isle of Man, the channel Islands, or elsewhere in Her Majesty's dominions, as if it were a warrant issued by a justice of the peace for an indictable offence, and such warrants shall be executed in the same manner, in all repects as search warrants for property supposed to be stolen

77 Where any Court having jurisdiction in bankruptcy under this Act commits any person to prison, the commitment may be to such convenient prison as the Court thinks expedient, and if the gaoler in any prison refuses to receive any prisoner so committed, he shall be liable for every such refusal to a penalty not exceeding one hundred pounds

General Rules

78 The Lord Chancellor, with the advice of the chief judge in bankruptcy, may from time to time make, and may from time to time revoke and alter general rules, in this Act described as rules of Court, for the effectual execution of this Act, and of the objects thereof, and the regulation of the practice and procedure of bankruptcy petitions and the proceedings thereon.

Any general rules made as aforesaid may prescribe regulations as to the service of bankruptcy petitions, including provisions for substituted service, as to the valuing of any debts provable in a bankruptcy, as to the valuation of securities held by creditors, as to the giving or withholding interest or discount on or in respect of debts or dividends; as to the funds out of which costs are to be paid, the order of payment, and the amount and taxation thereof, and as to any other matter or thing, whether similar or not to those above enumerated, in respect to which it may be expedient to

make rules for carrying into effect the objects of this Act, and any rules so made shall be deemed to be within the powers conferred by this Act, and shall be of the same force as if they were enacted in the body of this Act.

Any rules made in pursuance of the section shall be laid before Parliament within three weeks after they are made, if Parliament be then sitting, and if Parliament be not then sitting, within three weeks after the beginning of the then next session of Parliament, and any rules so made shall be judicially noticed

Until rules have been made in pursuance of this Act, and so far as such rules do not extend, the principles, practice, and rules on which Courts having jurisdiction in bankruptcy have heretofore acted in dealing with bankruptcy proceedings shall be observed by any Court having jurisdiction in bankruptcy cases under this Act

Change of Jurisdiction by Chancellor.

79 Notwithstanding anything in this Act contained, the Lord Chancellor may from time to time, by order under his hand, exclude any County Court from having jurisdiction in bankruptcy, and for the purposes of bankruptcy jurisdiction may attach its district or any part thereof to any other County Court or Courts, and may from time to time revoke or alter any order so made

Temporary Provisions.

128. Provides that, with the exception of the Commissioner who shall be chosen Chief Judge, and who in everything save his title shall continue the same, all the present Commissioners in London shall cease to hold office

129 Makes provision for the transfer of officers in the existing Court to the new Court of Bankruptcy and

for the disposal of pending business as the Lord Chancellor may direct

130 Abolishes the Country district Courts of Bankruptcy the pending business to be transferred either to the London Court or to such County Court as the Lord Chancellor may direct It also provides for the transfer of all documents and officers, and for the vesting of property

131 Provides for the compensation of officers.

132 Enacts that new officers shall be first selected from persons whose offices have been abolished, unless the Lord Chancellor thinks none of such persons are fit

133 Provides that no subsequent appointments to a vacant office shall be made without notice to the Treasury, and until the Lord Chancellor has determined that no person in receipt of compensation would be fit.

134 Provides that the Lord Chancellor may appoint any person whose office has been abolished to some other judicial office of equal or greater salary, and if such person refuses to act without just cause being shown, he shall forfeit his compensation.

135 Enacts that if any person receiving compensation accepts any other public office he shall only be entitled to so much as would make up his former remuneration and in case the salary of such latter office be greater than that of the former, his compensation shall meanwhile be suspended

136 Provides that any Registrar or other officer who may continue as such under the new Act shall be allowed the superannuation he would have received had not this Act been passed, and any other officer appointed under this Act shall be dealt with under the Superannuation Act, 1859.

Sched 2 List of Metropolitan County Courts

Bloomsbury, Bow, Brompton, Clerkenwell, Lambeth, Marylebone, Shoreditch, Southwark, Westminster, Whitechapel

End of the Act

CHAPTER X

IMPRISONMENT FOR DEBT.

New Year's Day, 1870, will bring to a close that power of imprisoning their debtors, by way of satisfaction, which creditors have more or less fully possessed for above five centuries. The Debtors Act, 1869, which abolishes imprisonment for debt on a judgment over £20 contains some exceptions by which matters recoverable summarily before justices, meaning poor-rates, and penalties not in respect of any contract, are not affected. The principal exception, however, is that regarding committal by the county courts and the extension of this power to the superior courts.

Since the abolition of direct imprisonment on a *ca. sa.* for debts not exceeding £20, the Insolvent Debtors Court, and after that the Bankruptcy Court in London and the County courts in the provinces, have possessed the power of imprisonment for forty days or less upon proof of means or fraud. It has been the aim of the Debtors Act to simplify this rather complicated machinery, and by *section* 5, subject to the rules that have to be framed, it is provided that any court may commit to prison for a term not

exceeding six weeks any person who makes default in payment of any debt duly ordered to be paid. There is a restriction in the county courts and other inferior tribunals that no judgment of a superior court exceeding £50 can there be made a ground for committal But it is clear, upon reading the whole of *section* 5, that there is no limit to the power of the superior courts, and that there a judge may order a commitment for the non-payment of any amount of debt upon proof to his satisfaction that the person making default either then has, or has had since the judgment or order, the means of payment, and has refused or neglected to pay the same.

2 This *proof of means* will doubtless be very difficult in practice, and with reference to judgment summonses in the county courts and in the superior courts it will be important to remember that "proof to the satisfaction of the judge" is materially different from the expression formerly used of "appearing to the satisfaction of the judge." The defendant's non-attendance when summoned to show cause why he has not paid is of itself some ground to satisfy a judge of his appearing to have means. This kind of evidence has frequently been thought sufficient, but under

the last Act, proof is required, and it will be necessary for creditors to show some tangible means before a commitment can properly be issued. As judgment creditors can at their own pleasure levy on all the defendant's goods to satisfy themselves, it may be fairly urged for debtors that something more than merely carrying on business and keeping up an establishment should be shown to justify an order for imprisonment. Persons committed by a superior court are to be treated precisely the same as if arrested on a *ca sa*, creditors will, therefore, have to pay for their caption.

This imprisonment will not, however, as under the old law, satisfy the debt or deprive plaintiff of any right to take out execution against the goods and chattels of the person imprisoned in the same manner as if such imprisonment had not taken place. It seems to follow from this that where a creditor has proved his debtor's means, he may have him committed to prison, and immediately afterwards levy on these same means, if tangible and available, to obtain payment of his debts and costs It is a moot question whether the total abolition of imprisonment for debt is desirable, but we venture to say that the Act of 1869, professing to abolish such imprisonment

will be very far from effecting that object, if, indeed, it does not increase the number of prisoners for debt. As there will henceforth be no difference in respect of commitment by the superior courts as to amount of debt, probably more judgments will be recovered below £20, as the facilities for imprisoning a debtor for six weeks without satisfying the debt or interfering with execution against his goods, may induce creditors to prefer the loss of the trifling costs of a judgment of a superior court, for debts a little under £20, to the heavy county court fees.

3 *Power to arrest a defendant about to leave England* is retained by *section* 6 under certain circumstances. But the plaintiff's debt must be for £50 instead of £20, and in addition to showing that there is probable cause for believing the defendant is about to go abroad, he must prove to the satisfaction of the judge that his absence will materially prejudice him (the plaintiff) in the prosecution of his action The Court may, upon evidence supporting these requirements, order the defendant to be arrested and imprisoned for a term not exceeding six months, unless he find the prescribed security in a sum not amounting to more than the claim made in the action

32 & 33 Vict. cap. 62.

An Act for the Abolition of Imprisonment for Debt, for the punishment of Fraudulent Debtors, and other purposes.

Sections 1 to 3 are preliminary, and provide that the Act may be cited as "The Debtors Act 1869," that it shall be confined to England, and that it shall come into operation at the same time as the Bankruptcy Act 1869, which statute and it are to be read together.

Abolition of Imprisonment for Debt, with exceptions.

4 With the exceptions hereinafter mentioned, no person shall, after the commencement of this Act, be arrested or imprisoned for making default in payment of a sum of money.

There shall be excepted from the operation of the above enactment:

i. Default in payment of a penalty, or sum in the nature of a penalty, other than a penalty in respect of any contract:

ii Default in any payment of any sum recoverable summarily before a justice or justices of the peace

iii Default by a trustee or person acting in a fiduciary capacity and ordered to pay by a court of equity any sum in his possession or under his control

iv. Default by an attorney or solicitor in payment of costs when ordered to pay costs for misconduct as such, or in payment of a sum of money when ordered to pay the same in his character of an officer of the court making the order

v Default in payment for the benefit of creditors of any portion of a salary or other income in respect of the payment of which any court having jurisdiction in bankruptcy is authorized to make an order

vi Default in payment of sums in respect of the payment of which orders are in this Act authorized to be made

Provided, first, that no person shall be imprisoned in any case excepted from the operation of this section for a longer period than one year; and, secondly, that nothing in this section shall alter the effect of any judgment or order of any court for payment of money except as regards the arrest and imprisonment of the person making default in paying such money

Saving of powers of Committal by the Superior Courts and County Courts

5 Subject to the provisions hereinafter mentioned, and to the prescribed rules, any court may commit to prison for a term not exceeding six weeks, or until payment of the sum due, any person who makes default in payment of any debt or instalment of any debt due from him in pursuance of any order or judgment of that or any other competent court

Provided—(1) That the jurisdiction by this section given of committing a person to prison shall, in the case of any court other than the superior courts of law and equity, be exercised only subject to the following restrictions, that is to say,

(*a*) Be exercised only by a judge or his deputy, and by an order made in open court and showing on its face the ground on which it is issued:

(*b*) Be exercised only as respects a judgment of a superior court of law or equity when such judgment does not exceed fifty pounds, exclusive of costs

(*c*) Be exercised only as respects a judgment of a county court by a county court judge or his deputy

(2) That such jurisdiction shall only be exercised

where it is proved to the satisfaction of the court that the person making default either has or has had since the date of the order or judgment the means to pay the sum in respect of which he has made default, and has refused or neglected, or refuses or neglects, to pay the same.

Proof of the means of the person making default may be given in such manner as the court thinks just, and for the purposes of such proof the debtor and any witnesses may be summoned and examined on oath, according to the prescribed rules

Any jurisdiction by this section given to the superior courts may be exercised by a judge sitting in chambers, or otherwise, in the prescribed manner

For the purposes of this section any court may direct any debt due from any person in pursuance of any order or judgment of that or any other competent court to be paid by instalments, and may from time to time rescind or vary such order.

Persons committed under this section by a superior court may be committed to the prison in which they would have been confined if arrested on a writ of capias ad satisfaciendum, and every order of committal by any superior court shall, subject to the prescribed rules, be issued, obeyed, and executed in the like manner as such writ

This section, so far as it relates to any county court, shall be deemed to be substituted for sections ninety-eight and ninety-nine of the County Court Act, 1846, and that Act and the Acts amending the same shall be construed accordingly, and shall extend to orders made by the County Court with respect to sums due in respect of any order or judgment of any court other than a county court

No imprisonment under this section shall operate as a satisfaction or extinguishment of any debt or demand or cause of action, or deprive any person of any right to take out execution against the lands,

goods, or chattels of the person imprisoned, in the same manner as if such imprisonment had not taken place

Any person imprisoned under this section shall be discharged out of custody upon a certificate signed in the prescribed manner to the effect that he has satisfied the debt or instalment of a debt in respect of which he was imprisoned, together with the prescribed costs (if any)

6 Gives power to arrest a defendant about to quit England upon proof that the plaintiff has good cause of action to the amount of *fifty* pounds or upwards, and that there is reasonable ground for believing the defendant is going to quit England and that his absence will "*materially prejudice the plaintiff in the prosecution of his action*"

7 Provides for the discharge of persons in custody at the commencement of this Act without prejudice to the creditors' remedies or security

8. Provides that sequestration against a debtor's property may be issued by any Court of Equity as if he had been arrested

9 Enacts that nothing in this Act shall affect powers given by the Bankruptcy Act, 1869, to arrest and imprison.

10. Defines the word "prescribed" to mean prescribed by the Rules to be made by the various courts

CHAPTER XI

FRAUDULENT DEBTORS.

1 *The punishment of fraudulent debtors* is mainly provided for by *section* 11, which enacts that any person adjudged bankrupt, or whose affairs are being liquidated by arrangement, shall be guilty of a misdemeanour, and liable to be imprisoned for two years in each of the cases given The section then details 16 offences, most of them being the same as under the Act of 1861; but there is one great difference in principle that cannot but have a very great effect upon the practice. To bring a debtor within the penal clauses of former statutes it has always been necessary to prove that he committed the acts specified with "intent to defraud." This is the old-fashioned and very sound notion of presuming a man to be innocent until he is found guilty; but by the new Act it is reversed, and certain acts of a debtor are made misdemeanours *prima facie*, and until the accused has shown his innocence. For instance, by *clause* 4 the debtor will be guilty of a misdemeanour if he conceals his property or any debt due to him, "unless the jury is satisfied that he had no

intent to defraud," there was a similar section in the Act of 1861, only there the offence was not complete unless done with an intent to defraud. So we see that the intent both was and is *necessary*; but that formerly it had to be proved by the prosecution, while, for the future, it will be implied, and thus the onus is thrown upon the debtor of proving that the act done by him, though suspicious, was committed with an innocent intention. This change is probably due to the well-known fact that the Act of 1861 has been but little used to punish fraudulent bankrupts, and it was supposed that the alteration will render the process easier and more effectual.

2. *Fraudulently obtaining credit, &c.*, is made punishable as a misdemeanour, with one year's imprisonment by *section* 13. It has reference to all debtors, and is a most important provision; but here we have the old principle, for to get a conviction it is necessary to prove a positive intent to defraud. These clauses are a somewhat dangerous extension of the criminal law, but they are framed for the protection of creditors and the punishment of fraud, and so we hope they may be successful.

3. *False claims by creditors* in cases of bank

ruptcy, liquidation, or composition are made misdemeanours by *section* 14, if done wilfully and with intent to defraud. Here compositions are expressly included, but as they are not mentioned in other parts of the Act, especially in *section* 11, it is doubtful whether fraudulent debtors who are arranging their affairs in this manner will not escape punishment. The omission would appear to have arisen from inadvertence, as it is impossible to imagine any reason for its having been done on purpose.

4. *Debts incurred by fraud are not released by the Bankruptcy Act* unless the creditor has assented to the arrangement or composition otherwise than by proving his debt and accepting dividends This is enacted by *section* 15 of the Debtor's Act, and may in some cases become of great importance

5. *Sections* 16 *to* 23 relate to the necessary procedure to be adopted in prosecutions under the Act, allowing expenses to be paid as on a felony, and giving some directions as to the form of the indictment; they will be found condensed at the end of the chapter.

6 *By section* 24 warrants of attorney and cognovits shall be executed in the presence of an attorney on behalf of the person who is to

inform him of its nature and effect, and then subscribe his name as a witness. *Section* 26 provides for the filing of such instruments.

7 *Section* 27 enacts that all *judges' orders* given by consent, with or without conditions, shall be filed within twenty-one days after making the same, "otherwise the order and any judgment signed or entered up thereon, and any execution issued or taken out on such judgment shall be void." Formerly, though, to make a judge's order valid against third parties, it was necessary to file it, yet against a person giving it, it held good, and such being the case a very small minority of judges' orders were, in fact, filed. But under the new Act, instead of being only voidable they are absolutely void against all parties, and therefore to make a judge's order of any avail it will be necessary to file it within the prescribed limit of three weeks from its date.

Section 29, and last, provides that nothing in the Act shall affect the custom or proceedings of *foreign attachment* as exercised by any competent court. This clause was, doubtless, inserted mainly for the protection of the *Lord Mayor's Court*, which exercises a wide jurisdiction through the medium of foreign attachments

Punishment of Fraudulent Debtors

11 Any person adjudged bankrupt, and any person whose affairs are liquidated by arrangement in pursuance of The Bankruptcy Act, 1869, shall, in each of the cases following, be deemed guilty of a misdemeanor, and on conviction thereof shall be liable to be imprisoned for any time not exceeding two years, with or without hard labour, that is to say,

1 If he does not, to the best of his knowledge and belief, fully and truly discover to the trustee administering his estate for the benefit of his creditors all his property, real, and personal, and how, and to whom, and for what consideration, and when he disposed of any part thereof, except such part as has been disposed of in the ordinary way of his trade (if any), or laid out in the ordinary expense of his family, unless the jury is satisfied that he had no intent to defraud.

2 If he does not deliver up to such trustee, or as he directs, all such part of his real and personal property as is in his custody or under his control, and which he is required by law to deliver up, unless the jury is satisfied that he had no intent to defraud.

3 If he does not deliver up to such trustee, or as he directs, all books, documents, papers, and writings in his custody or under his control relating to his property or affairs, unless the jury is satisfied that he had no intent to defraud:

4. If after the presentation of a bankruptcy petition against him or the commencement of the liquidation or within four months next before such presentation or commencement, he conceals any part of his property to the value of ten pounds or upwards, or conceals any debt due to or from him, unless the jury is satisfied that he had no intent to defraud

5 If after the presentation of a bankruptcy petition against him or the commencement of the liquidation, or within four months next before such presentation or commencement, he fraudulently removes any part of his property of the value of ten pounds or upwards

6 If he makes any material omission in any statement relating to his affairs, unless the jury is satisfied that he had no intent to defraud.

7 If, knowing or believing that a false debt has been proved by any person under the bankruptcy or liquidation, he fail for the period of a month to inform such trustee as aforesaid thereof

8 If after the presentation of a bankruptcy petition against him or the commencement of the liquidation he prevents the production of any document, paper, or writing affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law

9 If after the presentation of a bankruptcy petition against him or the commencement of the liquidation, or within four months next before such presentation or commencement, he conceals, destroys, mutilates, or falsifies, or is privy to the concealment, mutilation, or falsification of any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law.

10 If after the presentation of a bankruptcy petition against him or the commencement of the liquidation, or within four months next before such presentation or commencement, he makes or his privy to the making of any false entry in any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law

11 If after the presentation of a bankruptcy petition against him or the commencement of the liquidation, or within four months next before such presentation or commencement, he fraudulently parts with, alters, or makes any omission, or is privy to the fraudulently parting with, altering or making any omission in any document affecting or relating to his property or affairs

12. If after the presentation of a bankruptcy petition against him or the commencement of the liquidation, or at any meeting of his creditors within four months next before such presentation or commencement, he attempts to account for any part of his property by fictitious losses or expenses

13. If within four months next before the presentation of a bankruptcy petition against him or the commencement of the liquidation, he, by any false representation or other fraud, has obtained any property on credit and has not paid for the same

14 If within four months next before the presentation of a bankruptcy petition against him or the commencement of the liquidation, he, being a trader, obtains, under the false pretence of carrying on business and dealing in the ordinary way of his trade, any property on credit and has not paid for the same, unless the jury is satisfied that he had no intent to defraud

15. If within four months next before the presentation of a bankruptcy petition against him or the commencement of the liquidation, he, being a trader pawns, pledges or disposes of otherwise than in the ordinary way of his trade any property which he has obtained on credit and has not paid for, unless the jury is satisfied that he had no intent to defraud

16 If he is guilty of any false representation or other fraud for the purpose of obtaining the consent of

his creditors or any of them to any agreement with reference to his affairs or his bankruptcy or liquidation

12 Provides that if any person adjudged a bankrupt or whose affairs are being liquidated by arrangement quits England and takes with him, or attempts to do so, property to the value of twenty pounds, (unless the jury is satisfied that he had no intent to defraud) he shall be guilty of felony punishable for a time not exceeding two years, with or without hard labour

Fraudulently obtaining Credit &c.

13 Any person shall in each of the cases following be deemed guilty of a misdemeanour, and on conviction thereof shall be liable to be imprisoned for any time not exceeding one year, with or without hard labour; that is to say,

(1) If in incurring any debt or liability he has obtained credit under false pretences, or by means of any other fraud

(2) If he has with intent to defraud his creditors, or any of them, made or caused to be made any gift, delivery, or transfer of or any charge on his property:

(3) If he has with intent to defraud his creditors, concealed or removed any part of his property since or within two months before the date of any unsatisfied judgment or order for payment of money obtained against him

False Claims by Creditors.

14 If any creditor in any bankruptcy or liquidation by arrangement or composition with creditors in pursuance of The Bankruptcy Act, 1869, wilfully and with intent to defraud makes any false claim, or any proof, declaration, or statement of account which is un-

true in any material particular, he shall be guilty of a misdemeanour, punishable with imprisonment not exceeding one year, with or without hard labour.

15. Provides that debts incurred by fraud shall not be discharged by any arrangement or composition.

16 Enacts that the Court shall make an order for the prosecution of a bankrupt upon a report of the trustee or statement of any creditor to the effect that there is ground to believe he has been guilty of an offence, and will probably be convicted.

17. Provides that the expenses of such a prosecution shall be allowed, paid, and borne, as in a case of felony

18. Applies the Vexatious Indictments Act to offences under this Act.

Form of Indictment, &c.

19 In an indictment for an offence under this Act it shall be sufficient to set forth the substance of the offence charged, in the words of this Act specifying the offence or as near thereto as circumstances admit, without alleging or setting forth any debt, act of bankruptcy, trading, adjudication, or any proceedings in, or order, warrant, or document of any court acting under the Bankruptcy Act, 1869.

20. Gives jurisdiction to Quarter sessions in respect of offences under this Act.

21. Enacts that mayors, &c , shall be disqualified by arrangements with creditors.

22. Provides that a justice of the peace becoming bankrupt or arranging with creditors shall be incapable of acting until he has been newly assigned by a commission.

23. Provides that punishments under this Act shall be cumulative, so that a debtor be not punished twice for the same offence

Warrants of Attorney, Cognovits, and Orders for Judgment

24 Provides that warrants of attorney and cognovit actionem shall be executed in the presence of an attorney on behalf of the person.

25 Declares that any warrant &c., not formerly executed, shall be invalid

26 Enacts that warrants of attorney and cognovit actionem shall be filed within twenty-one days after the execution, and that if there be any defeasance or condition it shall be written on the same paper before filing, otherwise the same shall be deemed fraudulent and void

27 Provides that any judge's order given by consent shall be filed in the proper court within twenty-one days after making, otherwise the order, and any judgment or execution founded upon it, shall be void.

28 Applies the provisions of 3 Geo 4 c 39, and 6 & 7 Vic c 66, to judge's orders.

29 Nothing in this act contained shall affect the *custom of foreign attachment* as exercised by any competent court, or the proceedings in relation to such custom

End of the Debtors Act, 1869.

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